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# ETHICAL PRINCIPLES *of* MARRIAGE *and* DIVORCE

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**ETHICAL PRINCIPLES OF  
MARRIAGE AND DIVORCE**





**ETHICAL PRINCIPLES**  
**OF**  
**MARRIAGE AND DIVORCE**

**By LOUIS F. POST**  
**Author of "Ethics of Democracy," etc.**



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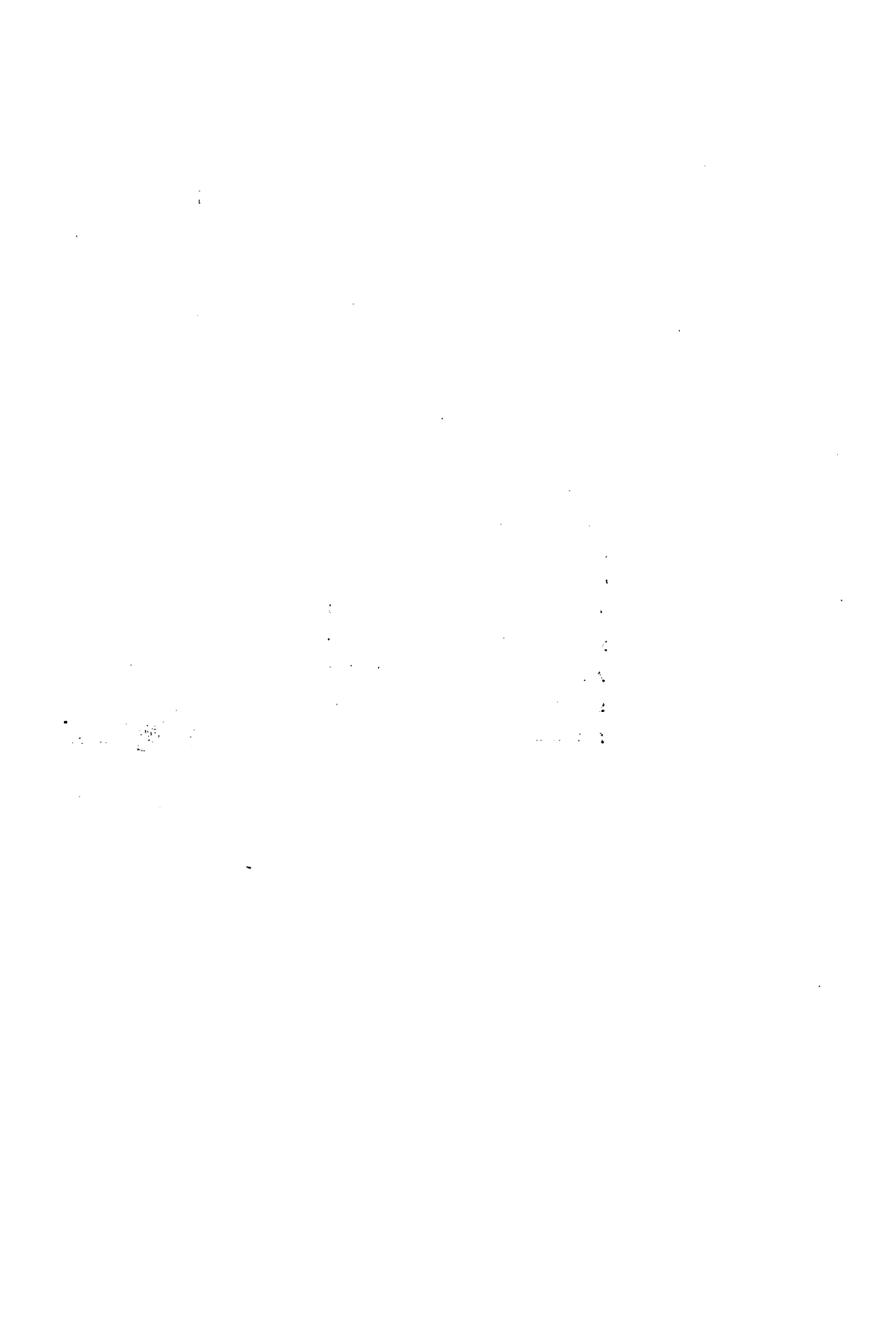
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OF HER AID IN DEVELOPING THE  
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AND PREPARING THEM FOR THE  
PRESS, AND AS AN AFFECTION-  
ATE RECOGNITION OF HER  
SERVICE IN ORIGINALLY IN-  
SPIRING THE THEME.



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## INTRODUCTION

**I**N the following pages the subject of marriage and divorce is discussed with reference to what the author regards as rational moral principle.

The primary doctrine upon which the discussion hinges is the essential difference between marriage itself and the marriage ceremonial or contract—the marriage itself being the natural relationship, and the ceremonial or contract being the conventional expression or declaration of that relationship.

This essential difference having been clearly distinguished, it is argued that all problems of marriage and divorce must be determined, not by superficial considerations respecting the conventional expression of the marriage relationship, which is a civil and ecclesiastical institution, but with reference to marriage itself, which is a natural phenomenon.

After an incidental speculation at this point as to the probability of spiritual elements in the marriage relationship, such as might vitalize natural marriages and invest them with eternal pos-



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sibilities, a speculation believed to be of practical value to all who accept the idea of spiritual origins and human immortality, and suggestive even to those who do not, the principal inquiry is renewed.

The doctrines of polygamy, polyandry and "free love" coming first under consideration, they are tested by the basic principles of natural law already disclosed with reference to marriage as a natural phenomenon, and are found to contravene those principles. They are therefore condemned—"free love" for its denial of marital as distinguished from fraternal love, and polygamy and polyandry for their plural quality.

Yet second marriages by either of the parties to a former marriage, the other party having meantime died, are approved. They are found to be harmonious with the same principles of natural law. The difference as to polygamy and polyandry is shown to depend upon the principle of the reciprocity of that unifying love which is the essential natural force that expresses itself in natural marriage. The operation of this principle is naturally possible with each of two or more successive marriages, the preceding one being at an end before the next begins; but its operation in conjunction with "free love," polygamy,

polyandry, or any other form of promiscuity, is naturally impossible.

The approval of successive marriages suggests at once the problem of divorce. If successive marriages are legitimate when death intervenes, why are they not legitimate when divorce intervenes? In preparation for a specific response to this question, a special examination is made into the nature and importance of the ceremonial institution of marriage—into the conventional declaration and tie, as distinguished from the natural relationship. The importance of conventional marriage being affirmed, the discussion proceeds with reference to nullifying this tie, and results in approval of a liberal policy in granting decrees of nullification. It is, however, only as nullification that this liberality is yet recommended, the question of marriage after divorce being reserved for further consideration.

But now that the way has been cleared for considering that question free from confusing irrelevancies, it is taken up in its order; and upon an extended examination, successive marriages after divorce are approved on the same general ground as successive marriages after death. In the one case as in the other, the preceding marriage is found to be at an end; and the parties to the marriage bond nullified by divorce, like the

surviving party to the marriage bond nullified by death, to be naturally, as they ought to be legally, free to contract another marriage. This conclusion is drawn from considerations of expediency with reference to conventional marriage, and of natural morality with reference to marriage itself.

The shadowy side of the subject now gives way to a plea upon rational grounds for the exalted character and natural sanctity of true marriage relations, and with that the book concludes.

Although spiritual reflections enter into this book, and at one place a somewhat extended speculation along the border land of spiritual philosophy is incidentally ventured, the book is not designed to be either religious or irreligious. It makes no attempt in any way, neither as to marriage itself nor as to conventional marriage, to invade the individual conscience with reference to particular marriages. So far from attempting to set up a spiritual code of marital obligations, its aim is simply to define the natural functions of society, considered as a form of human life, with reference to a human relationship which, except as civil rights are involved in it, is pre-eminently of personal and individual concern.

With profound respect for all sincere spiritual concepts and convictions, the author nevertheless addresses mainly the common sense, the

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ordinary sense, of our time, appealing to what he conceives to be the rational moral standards of natural human relationships. And he uses ordinary language with the ordinary significations. In no instance, without express explanation, is any word used technically. The term "natural," for example, is used in contradistinction, not to "spiritual," but to "artificial"—in the sense, that is, of things inhering in and springing from nature, whether human nature or external nature, as distinguished from things having only an artificial or conventional existence. It is in this sense that the term "natural marriage" is used in contradistinction to the term "conventional marriage."

There is no disposition on the one hand to make conclusions depend upon anything superior to nature, nor, on the other, to assume that nature is either all or primary; but natural phenomena and natural laws are taken as we find them, regardless of the question of spiritual vitalization.

There must be some way in which orderliness in the marriage relationship, both "natural" and "conventional," can be established without compelling general submission or expecting general agreement to particular philosophies, creeds, or ecclesiastical polities. This book may not indicate the right way. But its author has tried

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to find that way by a rational interpretation of those natural laws which are to morals what physical laws are to matter—those laws of human nature out of which, whatever superior forces there may or may not be, human society manifestly springs, and in harmony with which alone can human society flourish.

## CHAPTER I

### MARRIAGE

**T**HAT marriage is sacred, all who are about to marry believe, and all who are truly married know. It is, indeed, the most sacred thing in all the world. Yet its hold upon the popular imagination seems to have slackened, for demands that it be restored to public reverence become more widespread and more insistent. These demands run strongly in the direction of exacting greater strictness of legal regulation, both civil and ecclesiastical. But human law is as powerless to restore as to confer sanctity. Unless marriage is sacred in the hearts of the people, meddling legislation can only bring it into further contempt. If the sanctity of marriage be questioned by philosophers or scouted by skeptics, or the institution of marriage be scandalized by voluptuaries and triflers, no narrowing of ecclesiastical rules, nor any greater rigidity of municipal law, will prove remedial. The one would appeal successfully only to superstitious minds, while exciting the mirth of the scornful and the regret

of the thoughtful; the other, though it might whiten a sepulcher, could not vitalize the dead men's bones nor purify the uncleanness within. Reverence for the marriage institution can be restored only by cultivating that normal love for marriage which is implanted in every human soul; and this cannot be easily or thoroughly done until common thought regarding the nature of marriage is clarified.

All questionings of the natural sacredness of marriage originate for the most part in a certain confusion of thought, which is so common as to be largely responsible also for the feebleness of such pleas for marriage sanctity as are usually made. Controversies regarding marriage and divorce, while they seem to involve questions of marriage, seldom involve anything but the marriage ceremonial. That they seem to involve marriage itself is because most of us do not always analyze our thoughts very exactly. Neglecting to hold apart mental concepts that are discrete—failing, that is, to distinguish ideas essentially different,—we fall into the confusion of considering marriage itself as identical with the marriage ceremonial. The two things become one to our apprehension, and the natural tendency of the mind's eye to focus on the concrete rather than the abstract, does the rest. We ignore marriage in the abstract—

marriage as something in itself, regardless of its ceremonial expression—and speak and think of the marriage ceremony as if this mere formality were marriage. The error is so fundamental that any inquiry into the ethics of marriage and divorce must begin by dissipating the mental confusion in which it originates.

Before entering upon that task, however, let it be observed that in the habit of mentally substituting the ceremonial of marriage for the fact of marriage there is nothing peculiar. Few things are more common in human experience, from lowest savagery to highest civilization, than a tendency to idolize symbols and ceremonials.

Is it not true, for instance, that the primitive pagan forgets his living gods when he bows to their images in wood and stone? Is it not likewise true, for a complementary instance, that the reverence of civilized pagans is excited by the Bible volume or its archaic phrases, rather than by the spiritual principles it embodies? Is it not also true that churchly throngs are usually more impressed with the concrete externalities of church rituals than with the abstract spiritual truths they symbolize? Is it not true, for an instance in another connection, that it is the flag of our country rather than the fraternal ideals it silently proclaims that makes the blood of per-



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functory patriots run faster? The external in everything rather than the internal of anything, the concrete symbol rather than the abstract truth it symbolizes, the ceremonial form rather than the spiritual substance—it is this that always and everywhere impresses both “the lower mob and the upper.” Would it not be marvelous, then, if marriage escaped the degradation of being displaced by the ceremonials which only figure it forth?

The confusion of thought that causes this displacement degrades marriage and menaces the marriage institution. Marriage must be recognized as something at once more profound and more exalted than marriage ceremonials. The two things are essentially different. They cannot be confused without hazarding respect for the one and marring the usefulness of the other. They must always be clearly distinguished.

If, on the one hand, the marriage ceremonial has any sanctity at all, it cannot be original or inherent; it must be derived from marriage itself. On the other hand, if marriage itself has any sacredness it must be such as is peculiarly and primarily its own—original and not derivative, natural and not conventional. For the marriage ceremonial is manifestly only an artificial device, whereas marriage itself is a natural relationship.

The one is a human contrivance, the other a human characteristic. To consider, then, that marriage ceremonials create or constitute marriage, is in effect to assert or to concede that marriage is an artificial institution—incapable, therefore, of being sacred to any but superstitious minds.

But in truth, marriage ceremonials do not create and cannot constitute marriage. They are only the declaratory formality, as different essentially from marriage itself as conventional words and phrases are from the thoughts they express. Although declaratory of marriage, and creative of civil obligations—ecclesiastical obligations also, if you please—they no more make marriages than the crown makes a king or baptism makes a Christian. The symbols are not the substance. Whether the marriage ceremony be a perfunctory proceeding before a civil magistrate, or an informal public declaration by the parties, or a legal inference from marital conduct, or the most solemn rites of a church—it is neither more nor less than a formality, whereby the fact of marriage itself is certified to society and its obligations proclaimed. The ceremonial is the symbol; marriage itself is the substance.

It by no means follows, however, that marriage ceremonials, mere conventionalities though

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they be, are only empty forms. They may be extremely useful, even indispensable. As military dress does not make a soldier, neither do marriage ceremonials make marriage; yet as military dress proclaims the wearer's military station, so do marriage ceremonials proclaim the marriage state. They may do it falsely, even as military dress may be worn falsely. But instances of false participation in marriage ceremonials are not enough to disprove the genuineness nor to condemn the usefulness of these ceremonials in general. The point here emphasized, however, is not the value or legitimacy of marriage ceremonials;\* the point emphasized is the fact that there is an essential difference between the ceremonial and the marriage itself—a difference that should always be distinguished.

It may be easier to insist upon this difference than to distinguish it; but it can be well enough distinguished for all the purposes of practical discussion. We shall come pretty close to a working definition, at any rate, if we specify marriage love as an element absolutely essential to marriage, but not to marriage ceremonials. Few who reflect would deny that marriage itself depends, as the marriage ceremonial certainly does not, upon the

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\* See Chapter V, where the value and legitimacy of marriage ceremonials are discussed.

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complete union of one man and one woman through abiding love. ✓

Love is manifestly necessary to marriage. No union can be a marriage, let the ceremony be never so impressive and authoritative, if love be absent.

Is it not equally clear that the love necessary to constitute marriage must be in its nature abiding? Affectionate emotions, stirred by beauty of face or figure, or by strength of body or mind, cannot constitute marriage love, if marriage itself be anything more than a momentary passion; and all who are truly married know that it is not a passion, but a life.

Affectionate emotions that are inspired by physical attractiveness may, indeed, engender and attend upon marriage; but marriage love does not consist of affectionate emotions so inspired. Since physical attractions are transitory, love merely for them is in its nature ephemeral. This is true also of intellectual attractions, such as cleverness, brilliancy and the like. As all these are ephemeral, love for them alone is ephemeral in its nature, and therefore is not marriage love. The love that characterizes marriage must be of that kind which alone is capable of permanently welding together one

man and one woman into a single intellectual and moral being.

Singleness of being in marriage does not mean, of course, that either of the parties shall be master of the other. Marriage implies co-operation, not despotism. The freedom of each is necessary to the happiness of both, and therefore to their marital unification. Even the amiable despotism of benevolence has no function in marriage. The figure of the husband as a sturdy oak and the wife as a clinging vine, is a false figure. Wifehood is not parasitic. But the parasitic significance of the vine aside, the husband is a clinging vine as often as the wife, and each will play at times the role of sturdy oak if the marriage be a true mating.

Neither does singleness of being in marriage mean that there must be absolute agreement between the parties. Since no individual mind can be in agreement even with itself in everything and all the time, identity of intellectual and moral existence in marriage does not imply agreement of two minds in everything and all the time.

What is meant by singleness of being in marriage is the almost obvious idea that each of the parties to a genuine marriage must be in love with the higher intellectual qualities and the deeper moral impulses of the other. This is love

for the embodied character. It is love for the durable qualities of the marriage partner. It is therefore the love that endures, the kind that is abiding in its nature. / ✓

Yet marriage love, abiding though it must be in its nature, may often prove to be ephemeral in fact. The paradox is not unique. Many things besides marriage love may prove to be ephemeral in fact though abiding in their nature. Human life is one. Although human life is in fact often cut off long before threescore and ten, nevertheless in its nature it comprehends infancy, youth, manhood and age. It is in some such manner that marriage love, which is abiding in its nature, may prove in particular instances to be ephemeral in fact. One of the parties to a marriage originally genuine, because originally cemented with mutual love of that abiding kind which unifies—love by each for the character-building tendencies of the other—may decide to alter those tendencies. With this diversification in the character-building of the parties, the love that has made their union a true marriage can make it so no longer. Since the indispensable condition of unifying love (complementary functions in character-building) no longer exists in those persons, their unifying love dissolves and their marriage terminates. Obliga-

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tions resulting from the ceremonial may rightly survive;\* but the marriage itself is dead.

The man and the woman who love the same indestructible ideals, in the same general and fundamental way, and discover each in the other—instinctively, it may be, rather than reflectively—a complementary embodiment of those ideals, are mutually under the influence of marriage love. Intellectually and morally they are thereby made to grow together as one. This would seem to be in harmony with the nature of things. But if either ceases to love those ideals in that fundamental way, then marriage love tends to disintegrate and they cease to love each other with the love that unifies. This also seems to be in harmony with the nature of things. In the one condition they are married essentially, irrespective of ceremonials. In the other they are divorced essentially, irrespective of civil or ecclesiastical sanctions.


Whether this essential marriage should be figured forth by ceremonials; whether this essential divorce warrants the formality and freedom of civil divorce; whether either civil or ecclesiastical law should tolerate marriages of divorced persons—these questions still remain. So does

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\* See Chapter VI, where the subject of divorce is discussed.

the question of institutional polygamy. So do all the questions that are colloquially alluded to by the term "free love." So may a host of other questions. The marriage problem in all its ramifications is not solved by distinguishing marriage from marriage ceremonials. But that distinction is the necessary first step in the process of solution. Marriage ceremonials are one thing; marriage itself is another and different thing. Between mere conventional ceremonials proclaiming marriage, and the anterior fact thereby proclaimed, there must be a complete mental insulation. This is the primary condition of any rational discussion of the marriage problem.

In reflecting upon the theory of marriage here advanced, it is to be borne in mind that only temporal marriage has been considered. No conflict of opinion has been or is to be invited regarding either the possibility or the phenomena of a future life. But that phase of the subject cannot be altogether ignored. If marriage love is abiding in its nature, we cannot believe in the continuance of human life after physical death without regarding the abidingness of marriage love as eternal and not merely temporal, and true marriages as relationships which consequently never end. While those of us who reject the idea of the eternality of human life will of course reject the idea of the





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eternality of marriage, those of us who believe in the eternality of the former can hardly doubt the eternality of the latter. For this reason alone that phase of the general subject calls at least for incidental consideration. Moreover, as the hypothesis of eternal marriages in some distinctly spiritual state affords advantageous opportunity for considering temporal marriage ideally, the apparent digression may throw light upon the subject of temporal marriage. Let us pause, then, for an incidental speculation with reference to marriages as eternal phenomena.

## CHAPTER II

### ETERNALITY OF MARRIAGE

**T**HE idea of eternal life once adopted, its conjugal corollary cannot be lightly put aside. In some form the characteristic human relationship which unites the masculine and the feminine principles of mankind, and which in this life we call marriage, must, it would seem, be characteristic also of the life beyond. Upon the assumption, then, that the grave is not our goal, but that human life persists eternally and is characterized hereafter as well as now by the marriage idea, we should in reason expect to find, between eternal and temporal marriage, this difference—a difference of degree rather than kind—that, whereas temporal marriages are in their nature abiding for the temporal life but may not be abiding in fact, eternal marriages, whether begun in this life or in the future one, are abiding eternally both in their nature and in fact.

In the temporal environment, where human character is in the making, the conditions that

produce marriage unity—complementary masculine and feminine qualities of individual character—are subject to fundamental alterations. Consequently, temporal marriages may or may not be eternal. Whether the character qualities actually do alter in particular cases so as to destroy marriage unity, may seldom be known; whether particular marriage relations have ever possessed eternal qualities, may also be uncertain. For ours is a world of twilight and much illusion, where the trend of character-building may alter without always seeming to, and where, without altering, it may often seem to be different from what it really is. In these circumstances no one can assert of particular marriages that they are or are not eternal. The most that can be asserted of them, with reference to the possible eternality of marriage, is that they are dramatizations of the eternal marriage idea.

They must be cemented by love abiding in its nature, for that is of the essence of the marriage idea. Yet the natural abidingness of this love is limited, so far as man is capable of judging, by the limitations of temporal life; and, owing to the character changes in our character-building world, though the love be in its nature abiding for life, it may nevertheless terminate sooner in fact.

But upon the hypothesis of eternal life,

greater completeness of marriage may be assumed. The eternal marriages that must logically belong to a state of full spiritual consciousness would naturally be genuine in inception and endless in duration. In such a state there would be none of the illusions of this preparatory existence. Neither would the parties to an eternal marriage experience any fundamental alterations of character. Such character as they had formed in their character-building period, the period of their earthly embodiment, would persist—though not without development, yet without essential alteration.

This is surely a logical inference from the idea of individual immortality. For it is the individual character and not the natural body nor a nebulous essence, that can be supposed to have immortal identity; and the character being once formed, and being released from its physical mold by the dissolution of the body, may reasonably be expected to develop thereafter along the general lines of its formation. The unifying conditions of marriage love being thus eternally abiding, the love they generate must be eternally abiding also. Eternal in its nature, it must continue to be eternal in fact. The resulting marriage can therefore never come to an end.

To those of us who believe in the eternal life,

how is it possible to escape that conclusion, in substance, regarding eternal marriage? It is of the essence of the idea of immortality that the human body is merely an appropriate covering for the human soul in the material environment in which the soul's primary work is done. What submarine armor is to the diver while he works beneath the surface of the sea, such in principle is the body to the soul during the period of its character-building on earth. Those who hold this belief maintain that human motive and human thought, and all else that goes to constitute the soul, or real man, survive his casting aside of the material body. To such as these, whatever their religious affiliations, the idea, or at least a feeling, must sometimes come—though they may ignore or even doubt the logic of it—that there is truth in the theory that the unifying love which constitutes marriage may possibly abide eternally, and that therefore perfect marriage may be an eternal relationship which is more or less faithfully expressed or dramatized by temporal marriage.

Upon the hypothesis of eternal life flowing from an omniscient and beneficent Creator, especially in view of indisputable facts as to the equality of sex distribution, is it really irrational to infer that there is somewhere a wife for every man and a husband for every woman? Let the

question be reasonably understood. What it implies is that there probably exists in every feminine soul the potentiality of eternally abiding love for some masculine soul, and in him the potentiality of reciprocally abiding love for her. If that be true, can we rationally reject an inference that those eternal mates must somewhere, sometime, somehow, be attracted to each other and exist forever after as one being—as one in fundamental motive and thought, though distinctly individual in modes of expression?

If death is indeed a dreamless sleep, then there is truly no rationality in this thought about marriage. But in that case, neither is there any rationality in the fact of human life. A being whose impulses are progressive, whose powers are creative, whose intellect is expansive, and who has somehow acquired a moral sense, yet who ends it all in dreamless sleep—in a few years if he be considered as an individual, or a few centuries if he be considered as a race—is inexplicable upon any rational hypothesis. Man's genesis cannot be accounted for rationally, without assuming him to be an expression of some indestructible center of intelligent and beneficent force. His annihilation cannot be accounted for rationally without denying to that force both beneficence and intelligence. If human immor-

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tality is not, then there is no beneficent reason for human mortality.

But if the mortal does take on immortality, immortality itself would be unreasonable without what we call marriage. For the masculine and the feminine principles are no more truly characteristic of the body, than of those human qualities which are the immortal ones if any are. Feminine thought differs from masculine thought, feminine affections from masculine affections, feminine character as a whole from masculine character as a whole. But these differences, like sex differences of the body, are not antithetical; they are complementary. Masculine thought and feminine thought must co-operate to constitute human thought; masculine affections and feminine affections must coalesce to constitute human affections; masculine character and feminine character must combine to constitute human character.

If these qualities survive the mortal life, and individuality persists in the complete spiritual state, how is it possible to avoid the conclusion that marriage is as characteristic of that state as of this, and that all human kind will come to be perfectly mated? Celibacy is abnormal even in this imperfect life. Even here, where the spirit is contracted in its bodily mold, marriage is the

great epoch of individual experience, and its joys the crowning joys of existence. How perfect then must be the joys of marriage beyond the mortal veil! How perfect, that is, if human life is indeed a rational fact, and we are not mere vapory forms of matter nor the puppets of a malicious intelligence, but spring from a beneficent as well as intelligent force whose laws pervade the spiritual as well as the physical universe.

To speculate further upon the possibilities of the eternity of marriage relations, would perhaps be idle for any of the purposes of the present inquiry, which relates not to the possible marital phenomena of a future state, but to the marital actualities of the present. Yet a question regarding eternal marriage naturally arises, which ought not perhaps to be ignored, lest in some minds it might bear upon temporal marriage. What is the condition hereafter, it may be asked, when a person has been twice truly married in the temporal stage of existence, the second marriage occurring after the physical death of the former conjugal partner?

It is an old question, and the old answer with a perverted meaning, comes trippingly on the tongue: "In heaven there is neither marriage nor giving in marriage." As the question was a catch question, may not the answer have been



shrewdly framed, as in another instance, to confound the uncandid questioner? Is it not entirely reasonable, that is, to suppose that the answer alluded to mere ceremonial marriage, the kind of marriage which the question contemplated, and not to real marriage at all?

Ceremonial marriage in heaven is, indeed, hardly admissible as a rational speculation. The reasons for it in this world could not be supposed to exist in that world. To say that ceremonially there is neither marriage nor giving in marriage in heaven, is very far from saying that marriage itself is not a heavenly phenomenon.

But if marriage itself does belong to that happy post-physical life which we have learned to call heaven, this question recurs: What about marriages of persons who have been twice truly married in the physical life? Are both marriages eternal?

The question answers itself, when the difference between eternal marriage and temporal marriage is recognized. A true temporal marriage, resulting from love abiding in its nature for the physical life, may or may not be abiding in its nature eternally. Consequently, of many true temporal marriages not one might be eternal. And as it is reasonable to suppose that if there is eternal marriage it cannot be polygamous,\*

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\* See Chapter III.

but is constituted by the union of one feminine with one masculine individuality, it is a reasonable inference that if any of two or more genuine temporal marriages possesses the eternal quality, it can be but one of them, and therefore that the others will prove to have been temporal only.

In their temporal environment, men and women are moved by affectional impulses, often erratic but always instinctive, which repel or attract, and so bring about selective unions that are either eternal marriages or expressive of the marriage principle. Although there be no possibility of determining as to any one of these unions that it is or is not eternal marriage, this need raise no difficulty with reference to the problem of marriages for time as distinguished from those for eternity. Though the love which abides eternally be necessary to constitute the latter, the love which abides for life (or which, at any rate, is of that nature) may reasonably be considered as constituting the former. And inasmuch as it is temporal marriages we have to deal with in this world, we need for ordinary practical purposes to be solicitous only about the marriage unions that are constituted by the love which is in its nature abiding for life.

Abiding love for life may, indeed, be regarded as expressive of the principle of abiding love for

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eternity; and temporal marriages—with all expressions, contracts and ceremonials of marriage—as consequently reaching upward to the idea of eternal marriage. It is, perhaps, a vague recognition of this sequence that really gives to temporal marriage unions their profoundly sacred quality. Though these unions be imperfect in the present life, though they be not actual marriages in the profoundest or most abiding sense, they may, none the less, be the natural symbols of eternal marriage and its temporal substitute.

If perfect marriage be impossible of realization during the character-making period of life, in a world where the greatest and most abiding realities are manifest to the physical senses only through moving pictures or dramatic representations, then the manifestations of abiding love which we observe in temporal marriage may very well be phenomena representing that eternal love which is inseparable from the most perfect marriage. The marriage union of one man and one woman, produced and cemented by love abiding in its nature for life, may be a genuine temporal marriage; it may be as truly such as the union of two fundamentally complementary characters, masculine and feminine, produced and cemented by love abiding in its nature for eternity, is a genuine eternal marriage.

Whoever denies the idea of the eternity of human life cannot be expected to adopt any of its corollaries. As proof of the sanctity of marriage he would doubtless demand considerations which he regards as more substantial than these, to him, mystical and therefore nebulous speculations. That demand shall be met farther on. The suggestions of this chapter are especially for readers who do believe in the reality of life beyond the grave. If there is such a life, if it is individual, if it is an evolution from the Intelligence and Beneficence which sustain this life, then individual marriages of eternally complementary characters must be its crowning glory. And in that case this ideal of eternal marriage must be reflected in temporal marriages. To believe in the ideal of marriage eternal is the better to understand its expressions in marriage temporal.

Whether or not we concede the eternity of human life, and therefore the eternity of marriage, there is no reasonable escape from the conclusion that the essential principle which must constitute eternal marriages, if they do exist, points to the essential principle of temporal marriage. The mystical is here paralleled by the sensuous. Look upon the nature of marriage as we may, whether as continuing upward and inward to the heart of the great spiritual mystery,

or as comprising only the personal and social phenomena that are strictly within the sphere of scientific observation, yet there is no difference in principle. In this world of sense and time, as in the supersensuous and eternal world, marriage is constituted neither by ephemeral affections nor by contractual ceremonials, but by the reciprocal love, unifying in its tendencies and abiding in its nature, of one man and one woman.

## CHAPTER III

### POLYGAMY, POLYANDRY, AND "FREE LOVE"

**I**F the essential marriage tie be as we have described it, plural marriage is a natural impossibility.

There may be plural ceremonial marriages, of course, for ceremonial marriage, a mere conventionality, is like any other conventionality: it may vary with time, place, circumstances, laws, necessities, manners and customs, and even be done away with altogether.

But essential marriage, marriage itself, the natural union which the conventional tie only symbolizes or outwardly verifies—this natural principle, like any other natural principle, is invariable and indestructible. If, then, essential marriage be constituted by reciprocal love, unifying in its tendencies and abiding in its nature, between one man and one woman, neither polygamy nor polyandry can be a variety of marriage. The idea of marriage love between one man and

several women, or one woman and several men, is expressly excluded by one of the terms of the marriage principle, namely, that marriage love is reciprocal between one man and one woman.

The argument does not end, however, with what may seem like an appeal to an arbitrary dictum, but goes back of the bare statement that only one man and one woman can mutually experience marital love. As a little reflection will show, the apparent dictum which defines marriage in monogamous terms is not arbitrary. It is a logical deduction from the premise that marital love must be in its nature unifying. If the unifying tendency is necessary to constitute marriage love, then marriage must be monogamous.

In contradistinction to any love that does not unify, such as friendship love, the love that does unify may be likened to chemical combinations in contradistinction to mechanical mixtures in physics. Friendship love only aggregates; it does not combine. Consequently it results only in association, not in union, and cannot make marriage. Marriage love must be a love that combines, coalesces, unifies.

Such love is possible only between persons of opposite sex. Between men only, or between women only, the unifying love of marriage is as impossible as electrical attraction between the

## POLYGAMY AND "FREE LOVE" 27

same poles of a battery. This love is the aggregative or federative love of friendship; it is not the combining, coalescing and unifying love of marriage. Both the masculine and the feminine elements in marriage love are incomplete in themselves. In order to constitute marriage, each needs its complementary element.

This obvious principle of marriage has its physical analogue in the function of race reproduction. The complementary qualities of marriage love, which give to our language such endearing words as "husband" and "wife," may be said, and without mysticism, to be analogous to the physical qualities which give to the language such related words of endearment as "father" and "mother."

It seems superfluous to urge the consideration that marriage love must be sexual. No one doubts that complementary and reciprocal sex qualities are indispensable to marriage love; and none would dispute that those qualities are foreign to any kind of love which persons of either sex may have for others of the same sex. Yet the legitimacy of polygamous marriage (and polyandry is, of course, within the same principle) depends upon ignoring the logic of those considerations. From the obvious fact that the unifying love of marriage naturally subsists only between persons of



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opposite sex, it logically follows that marriage is naturally monogamous.

For, even if it were conceded that in polygamous relationships each wife might love the common husband with the unifying love of marriage, and that the common husband might love each of his wives with the same kind of love, there would nevertheless be no marriage of all the members of that group. As the wives, being of the same sex, could not have the unifying love of marriage for one another, there could be no unification of the group as a whole.

The love that makes polygamous relationships produces not a combination but an aggregation. However unifying, even in its heterogeneity, the love of the husband for all his wives and theirs for him may by any stretch of the imagination be supposed to be, the love of the wives for each other can at best be, not the unifying love that constitutes marriage, but only the federative love that constitutes friendship.

Polygamous relationships are no more marriages than a rhyming dictionary is poetry. Concede that marriage love is the love which in its nature unifies, and the monogamous principle is granted.

The same test is applicable to most of the marital doctrines that are colloquially identified

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by the term "free love." The soundness of such of those doctrines as spring from higher impulses than lascivious passion, or rest upon firmer foundations than materialistic philosophies, may be determined by this touchstone, that unification is an essential principle of marriage love.

In so far as "free love" doctrines may really depend upon animalism or materialism, the argument against them must be carried farther back into the domain of first principles than it is within the necessities of this inquiry to go. We are dealing here, not with sexual degeneracy on the one hand, nor with the primary misconceptions of materialism on the other. These considerations are addressed to minds that acknowledge the fact of a moral sense, and try to harmonize principles of human conduct with its monitions.

Strangely enough, the term "free love" has come to imply licentiousness. Yet no one can conceive of love that is not free. Although tyranny may force men and women to do many things against their will, it cannot force anyone to love another. All genuine love is free love.

The bestial connotations of "free love" are largely attributable, probably, to idolatrous minds which ignore the essence of things and lay all stress on superficialities. They forget the spirit while worshiping the symbol. Advo-

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cates of "free love" have themselves contributed no small share to this unpleasant significance of what ought to be a cherished term in the vocabulary of marriage. Like their adversaries, many of them have doubtless been led into doing so by concentrating their attention upon symbols instead of substance, upon form instead of essence. In their defiance of certain external forms of the marriage relation, they have neglected to distinguish marriage itself; and in consequence of this confusion they have assumed, in appearance at least, an attitude of hostility to the most sacred tie in human life.

When "free love" philosophies of the idealistic as distinguished from the animalistic and the materialistic types are fairly probed for the truth there may be in them, they are found to rest upon more or less confused concepts of the idea of brotherly love as a moral law. Even those that are professedly utilitarian, formally denying the doctrine of brotherly love as a moral law, oppose marriage upon grounds of the utility of individual freedom; and this is after all, at bottom, an acknowledgment of moral law.

The highest moral expression of "free love" doctrines takes the form of opposing marriage (not the contract alone, but also marriage itself) as immoral because it contravenes the moral law

of love for all—the law of love, not for one man or one woman, but for all men and all women. This position depends really upon a double meaning of the word "love." The love of each for all, which makes for human brotherhood, is a radically different thing from the love which unites one man and one woman in marriage. Universal love and marital love are similar only in name.

Universal love does, indeed, extend from and to members of each sex. But it ignores sex distinctions. Flowing from all to each and from each to all—man or woman, friend or enemy—it is a love that stimulates the human sense and spirit of universal justice. In its nature it is the same whether it flows reciprocally between persons of opposite sex, or between persons of the same sex.

Not so with marital love, though there be the accidental similarity of name. Marital love is that force which, whether we recognize it as moral or class it as sensuous, so combines the human masculine and the human feminine as to constitute the human unit.

Latin terms may possibly serve the purpose here of greater definiteness of expression. Universal love, the moral love of each for all and all for each, comprises that sense of justice whereby the *homo* is federated and society

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formed; but marriage love is the love whereby the *homo* is constituted, through the unification of its complemental parts, the *masculus homo* and the *femina homo*—the male man and the female man. For the *homo*, or unit of mankind, is really neither male nor female, these being only complemental elements. The true human unit is a male man and a female man, made as one complete human being by marriage.

This oneness is produced by the reciprocal sexual love that unifies complementaries—individuals who are complementary not only physically but also in their character-building tendencies. To think of marriage love as identical with brotherly or neighborly love is to confuse different ideas through similarity of names. To infer from the brotherly law of universal love that the reciprocal love of husband and wife, if exclusive, is selfish, and therefore unbrotherly, is to fall into one of the traps which lie in wait for minds that refuse or neglect to distinguish essential differences.

This criticism of the idealistic philosophies that oppose marriage as selfish and unbrotherly, is appropriate also to the utilitarian philosophies which reject it as invasive and inexpedient. Both confuse essential differences—differences which in the last analysis are very similar to those just

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indicated. Observing no essential difference, they make no clear distinction between the general social federation of men and women, which is one thing, and a marriage union of one man and one woman, which is something altogether different.

The emphasis of this condemnation of polygamy, polyandry and "free love" is not laid upon the fact of multiplicity of sexual alliances. It is laid upon the fact of their promiscuity.

Genuine temporal marriages might exist between one man and several women, or between one woman and several men, but not concurrently. To be marriages they must be successive, not promiscuous. And this difference between multiplicity and promiscuity hinges upon the essential marital principle of unifying love. Successive monogamous marriages do not conflict with that principle; promiscuous alliances, even though marital in form, do conflict with it.

Whether in any of the unconventional forms of so-called "free love," which treat the most intimate sexual relationship as an incident of ephemeral passion; or in the institutional forms of polygamy or polyandry, which substitute a harem or a hive for the home; or in the numerous prostitutional forms, which set up few claims to legitimacy—promiscuity is not marriage. Though they were enjoined by the civil power and sanctioned

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✓ by ecclesiastical authority, these relations could be marriage relations only in form. They could not be marriage itself. Marriage itself, let the outward form or symbolism be what it may, exists only when one man and one woman are united by reciprocal love abiding in its nature.

## CHAPTER IV

### SUCCESSIVE MARRIAGES

**T**HE conclusion that successive monogamous marriages are not open to the objection of promiscuity may invite further questioning; for upon that conclusion may depend the legitimacy of second marriages after divorce, and even of such marriages after the death of one of the parties to the former marriage.

If concurrent marriages are naturally impossible, there seems at first to be plausibility in the inference that successive marriages must likewise be so. But reflection upon the answer already given, that in each successive marriage unifying love is possible, whereas in concurrent marriages the love can be at best only federative and not unifying, will make the difference between the two cases clear and establish the radical distinction between concurrent and successive marriages as sound.

Polygamic and polyandric marriages must be condemned as absolutely irreconcilable with the



principle of marriage unity; but successive marriages are not necessarily irreconcilable with that principle. "Free love" must be condemned because it ignores the essential principle of the love that makes marriage; but successive marriages may, each in its order, be cemented by essential marriage love. There is, therefore, nothing of promiscuity in successive marriage relationships, if each be constituted by love abiding in its nature, and each ends before the next begins.

The crucial point, then, regarding the legitimacy of a second marriage, is whether or not the prior one still lives. If it does live, the second is subject to the objection of promiscuity. But if all prior marriages in a series of successive marriages are dead, the last one in the series must, so far as the question of plurality affects it, be as legitimate as the first.

And the life of a marriage cannot be perpetuated by making the marriage bond indissoluble. Since marriage itself and not the marriage ceremonial, constitutes the marital relationship, it is the vitality of the marriage itself and not the potency of the ceremonial bond, that determines the life of a marital union.

This does not imply that marriage ceremonials are unimportant. What it implies is that

their importance has limitations. To give excessive importance to marriage ceremonials is to degrade marriage, not to conserve it. They must not be allowed to prevent a new marriage when the older one is dead.

The first consideration regarding successive marriages is the effect upon temporal marriage of bodily death. Does a marriage naturally die with the death of one of the parties to it? On this question there is almost universal agreement.

In the sensuous view, according to which human life ends with the death of the physical body, the love that makes marriage must necessarily be regarded as ending with death. Reciprocal unifying love cannot possibly survive either of the two persons it unites. To the materialist, therefore, every marriage naturally dies with the bodily death of either party to it; from which it follows in his philosophy that successive marriages separated by bodily death are free from promiscuity.

In the spiritual view, the marriage love that constitutes a temporal marriage is abiding in its nature only for the period of bodily life. Though it may possibly be eternal in its character, not even the parties to it can know that it is so; and at any rate, the material and the distinctly spiritual spheres of existence are so insulated from

each other that personal relationships can rationally be supposed to be created in the former only with reference to its own limitations. Accordingly a temporal marriage is, as to temporal concerns, only for the life of the parties. So far, then, as it relates to what is temporal, it dissolves with the death of either party. Whether or not the same union revives in a further or continuing life on some other level of human existence, has to do with that life and not with temporal life, with that level of existence and not with this. In the spiritual view, therefore, as well as in the sensuous, temporal marriage ends with bodily death. Successive marriages separated by death are consequently free from promiscuity.

On this point there is no confusion with reference to marriage ceremonials. The ceremonial contract being for life only, even idolatrous minds, which tend to regard as marriage itself the mere ceremonial proclaiming marriage, must acknowledge that marriage ends with life, and that successive marriages are free from promiscuity if separated by death.

In every view of the question—the material, the spiritual and the ceremonial—temporal marriage comes to an end when death intervenes. Subsequent marriages, being thus free from promiscuity, are, so far as objections to plurality have

any bearing, entitled to be considered as legitimate.

But there is no such unanimity of opinion over questions of successive marriages separated otherwise than by death. While all agree that the death of a party to a temporal marriage dissolves both the marriage itself and its ceremonial bonds, thereby justifying a succeeding marriage by the survivor, it is not so with reference to divorce. A strong if not the dominant opinion, opposes marriage by either party to a prior marriage, when divorce only and not death has intervened. Yet the determining principle is really in each case the same.

The legitimacy of successive marriages when death intervenes, depends, in the last analysis, not upon the fact of the death of one of the parties to the prior marriage, but upon the fact of the death of that marriage itself. If, for illustration, the marriage survived the death of a wife, the second marriage of the widower would be plural—as truly so as is polygamy, and as illegitimate. It is because the unifying love of temporal marriage may dissolve with bodily death, that successive marriages are legitimate when death intervenes. This is the reason, at any rate, that appeals to all but mere ceremonialists. But it will hardly be denied that there are cases in which

marriage love dissolves without the intervention of bodily death. In such cases why may not successive marriages be as legitimate as when death intervenes? The crucial fact with reference to successive marriages acknowledged to be legitimate must not be forgotten. It is not the bodily death of one of the parties to the prior marriage; it is the death of the prior marriage itself.

To conclude, as we have already done, that sexual unions unsanctified by the love that unifies character-building tendencies are not marriages, neither eternal nor temporal, is to concede that any temporal marriage from which that love departs, as we have concluded it may, is desanctified. It thereby and thereupon ceases to be a marriage.

Questions of divorce law, therefore, have nothing to do with marriage itself. They cannot affect it one way or another. Divorce laws are as alien as writs of replevin, to marriage itself. If the marriage continues, then it continues—divorce law or no divorce law. If it does not continue, then it does not; and there an end. So long as the unifying love that makes a marriage lives, divorce laws can no more dissolve that marriage than they can separate the children of the marriage into their original paternal and maternal elements. Whatever natural law holds together,

man-made laws cannot put asunder. But, conversely, whatever natural law puts asunder, man-made laws cannot hold together.

When the unifying love of a temporal marriage, though originally abiding in its nature, proves with lapse of time to be ephemeral in fact and dies, or when a sexual relationship has begun and continued in the name of marriage and pursuant to marriage ceremonials but without the unifying love whereby marriage is essentially distinguished from concubinage, legal divorce is superfluous, so far as it concerns or can affect the question of marriage itself as distinguished from marriage ceremonials and their civil obligations. In such cases the ceremonial of divorce, like the ceremonial of marriage, is at most but a formal, though it may be a necessary, declaration of an existing fact.

The practical question regarding divorce laws is not whether they may attempt the impossible by assuming to dissolve living marriages, or the superfluous by assuming to terminate dead ones. It is whether they may with propriety annul the civil obligations of marriage ceremonials, thereby enabling parties to such ceremonials to enter into other marriage relationships without incurring the penalties of the civil law or the just opprobrium of society.

No question of ecclesiastical obligation is involved, unless it be contended that churches shall be allowed to rule the state in matters of marriage. In so far as successive marriages are questions of church obligation, churches may assume toward them whatever attitude they please. They may refuse to ceremonialize marriages of persons divorced. They may expel such persons if they marry without their sanction. They may deny to the bodies of such persons funeral rites and burial within church enclosures. They may forbid marriage to part of their membership, as some communions do, or to all, as one at least has done. They may regulate the marriage relations of their members as they choose, within the limits allowed by legitimate civil regulation.

For in all this there is no civil coercion. Those who respect church authority or fear church penalties, will conform to church requirements; those who do not, will be free to follow the dictates of their own consciences. So long as the state is not called in to enforce the discipline of churches, no outsider has the right to condemn the attitude toward marriage of any church. Since nobody is coerced but those in voluntary membership, there is no invasion of rights.

Yet a suggestion may not be impertinent.

Even as matter of church obligation, it will probably be conceded that the sole question with reference to a second marriage is whether the former marriage is dead. It is inconceivable that any religious system which approves of marriage would forbid a second marriage under circumstances in which the former marriage clearly did not subsist. This may be inferred from the fact that no church objects to successive marriages when death intervenes. True, in those cases death is supposed to terminate the marriage. But after all it is the termination of the marriage that really decides the matter. The death of the marriage is inferred from the death of either party. If the same thing were inferred from the fact of divorce, there should be no more objection on the part of churches to successive marriages when divorce intervenes than there is when death intervenes.

Ecclesiastical objections to the marriage of divorced persons will be found upon analysis to spring from a belief that the original temporal marriage, which would not survive the death of one of the parties, does survive their divorce. This belief, if it related to marriage itself, would admit of rational discussion. For if the unifying love which made the prior marriage did survive the divorce, a subsequent marriage would of



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course offend against the principle of monogamy. But if the belief in question relates only to the effect of marriage ceremonials, assuming them to be sacrosanct and their bonds indissoluble regardless of the death of the marriage they symbolize, is not this an irrational belief—irrational to the extent of idolatry?

Irrational as this possible idolatry may be, however, we must never forget that every man has a right to be even irrational and idolatrous, provided he does not impose his irrational notions and his idolatrous penalties upon others, against their will, by calling in the aid of the civil power. This right with its proviso applies as well to churches as to individuals. To paraphrase a famous saying of Daniel O'Connell's: "All the religious authority you please, within the churches; but no civil coercion at their dictation."

It is not with ecclesiastical exactions unenforced by the civil law that public discussion of successive marriages with intervening divorce has to do. The discussion raises a social and civil, not an ecclesiastical question; and it is with reference to the social and civil phase of the subject that this inquiry is made.

In harmony with the general theory already outlined, we shall encounter in that inquiry prob-

lems that may be summarized in these five questions:

One. May society properly exact binding contracts of marriage, and assume for social and civil purposes that if there be no contract of marriage there is no marriage?

Two. If so, has society the right to regulate marriage contracts so far as to inhibit the making of a second marriage contract while a previous one subsists between either party and a third person?

Three. If society has this right, has it also the complementary right to annul marriage contracts?

Four. Assuming society to have this right of nullification, may the parties to the contract or declaration of a marriage which has come to an end through the dissolution of the unifying love that made it—may they themselves, or either of them, properly call upon society to annul the contract?

Five. Is either party to an annulled marriage contract properly at liberty, while the other lives, and not only as matter of naked legal right but also with reference to the just censures of public opinion, to enter into a marriage contract with a third person?

The last three of these questions concern the

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subject of divorce, and will be considered later on. The first two, which relate to the ceremonial of marriage in its civil and social as distinguished from its ecclesiastical aspects, are next in order.

## CHAPTER V

### MARRIAGE CEREMONIALS

**I**N their civil and social, as distinguished from their religious bearings, marriage problems hinge not upon the fact of marriage itself, but upon the marriage ceremonial. For it is by means of this that the marriage contract is declared, and with reference to it that the civil obligations of marriage must be determined.

The particular form of ceremonial may be properly disregarded. Whether it be distinguished by church rituals, by prescribed civil proceedings, or by mere informal announcement, makes no difference—not for civil and social purposes. Church authorities may insist upon ecclesiastical formalities, and religious sentiment may reverently acquiesce; but civil society can properly demand nothing more than that there shall be a binding and exclusive contract, and that this contract shall in some form agreeable to the parties be publicly avowed.

That civil society can rightly demand nothing more than this regarding marriages, admits of

no dispute without injecting ecclesiasticism into questions of civil government and thereby confusing the functions of church and state. It may be fairly questioned, however, whether civil society has the right to demand even so much. We are therefore confronted with the first two of the five questions reserved in the preceding chapter for our consideration, namely:

One. May society properly exact binding contracts of marriage, and assume for social and civil purposes that if there be no contract of marriage there is no marriage?\*

Two. If so, has society the right to regulate marriage contracts so far as to inhibit the making of a second marriage contract while a previous one subsists between either party and a third person?\*

At the outset of this examination let it be understood that the principle already advanced and discussed is insisted upon, namely, that the ceremonial contract of marriage is only a conventionality. No marriage is really made by the ceremonial contract. Quite irrespective of that conventionality, the marriage either does exist or does not exist. Yet it by no means follows that civil society may properly dispense with or disregard the conventionality.

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\* See page 45.

Doubtless there is plausibility in the argument against conventional marriage. Marriage concerns the parties so vitally, and in its more vital respects seems to affect them so exclusively, that the contention that civil society ought to "keep hands off" appears to have great force. Nor does this notion lose any of its apparent force when brought to the test of the highest ideals of marriage. Inasmuch as marriage itself is the real substance, and marriage conventionalities are only a shadow or shape, the conclusion may seem to follow that civil society ought to ignore conventionality and refer the whole subject of marriage to the unrestrained jurisdiction of the only competent tribunal—the will and understanding of the parties in each case.

But that position is untenable. It rests upon the assumption that only the parties to a marriage are seriously concerned in its civil obligations, which is a manifest mistake; and it proceeds upon the theory that conventionalities are superfluities, which is erroneous, as some reflection will show.

Conventionalities are not necessarily superfluous. Probably all persistent conventionalities, even the least important, are rooted in some useful purpose. Were we to take the trouble to understand them, we should probably learn to

respect them more highly and to observe them more faithfully.

Occasions arise, of course, when even useful conventionalities are to be cast aside without hesitation or heartache. Such occasions are illustrated in a minor way by the familiar story of the gentleman who, upon observing at a public dinner that other guests were rudely smiling at the mistake of an unsophisticated diner in drinking from his finger bowl, rebuked the cultivated boors and put the stranger in countenance by himself using a finger bowl as a drinking cup. That defiance of a polite conventionality was an act of true politeness, and one which probably demanded some degree of moral courage. Yet we should hardly say that it would be either polite or courageous to defy dining conventionalities by habitually drinking from finger bowls.

As a rule, conventionalities are to be respected for their probable usefulness. Little ones may have their little uses, larger ones their larger uses.

The little conventionalities are to brotherly association somewhat as rules to arithmetic. They save the labor of calculation. Abolish them, and we should be under the necessity of calculating the effect of every social act, with all its possibilities of social disturbance. The conventional rule

enables us with ease to avoid awkwardness and to prevent misunderstandings and possible ill-feeling. Observed with good sense, conventionalities have a function in social intercourse not unlike that of the bark to the tree, the skin to the flesh, the clothing to the skin; they are guards and protectors. Only when they are given greater importance than the uses they serve, do conventionalities become instruments for defeating instead of promoting their legitimate purpose.

To be habitually unconventional, merely for the sake of being so, is to be unsocial. It is not snobbishness altogether that excludes unconventional persons from refined social circles. Though this exclusion is often due to idolatrous devotion to conventionalities, yet beneath even that motive there is a substratum of sound reason. One might as well try to enjoy a game with players who insist upon ignoring its rules, as to expect enjoyment from social intercourse with those who pride themselves upon disregarding social conventionalities.

As with the little conventionalities of social intercourse, so with the bigger ones of our great social life. Their measure is larger and their plane higher, but their function is much the same.

A conventionality is of course to be defied when it is morally wrong. And for this purpose



one need but honestly believe it to be morally wrong, for everybody's moral forum is in his own breast. If conventionalities stand in the way of one's duty as he sees duty, his duty has first claim. But unless a conventionality does stand in the way of duty, the presumptions favor its observance. In that larger society of the human brotherhood, as in the little social groups into which it is broken up, conventionalities minimize friction and promote harmony.

In consonance with these views, the respect that ought to be paid to conventional marriage depends upon whether that conventionality conflicts with moral duty. Whoever believes sincerely that the conventionality is immoral, is in duty bound to disregard it—bearing the penalty with fortitude, as he would have to bear the penalty for breach of any other generally accepted conventionality. But what good ground is there for regarding conventional marriage as immoral?

Only two plausible reasons are advanced. It is said, for one thing, to sanction adultery. This is upon the ground that in the deeper and truer, as distinguished from the merely conventional sense, cohabitation under the sanctions of a marriage ceremonial which has ceased to be expressive of genuine marriage, is adulterous. For the other thing, in cases of persons whose conven-

tional marriage does not rest upon genuine marriage, it is said to operate to prevent genuine marriage. But whatever weight may be given to these reasons as objections to the indissolubility of conventional marriage, neither has any force as an objection to the conventionality itself. Both relate to the perpetuation of the civil tie, not to its exaction, and are therefore not pertinent here.

Against the paucity of reasons for doing away with the ceremonial contract of marriage, there are abundant reasons for respecting it as a conventionality and regulating it civilly with reference to its civil obligations.

If marriage—not the conventional form merely, but marriage itself—engenders civil obligations between the parties, or from them to other persons, then society may properly require ceremonial contracts as a consideration of giving to marriages social status and civil recognition. In support of this position it is not necessary to go farther than to the commonest and most obvious principles of organized social life. When any duties are assumed toward individuals whose rights with reference to those duties civil society ought to protect, rights and duties of regulation by civil society arise, and it is thereupon within its province to exact reasonable conventionalities for the purpose of fixing responsibility.

Now, the marriage relation does engender obligations and responsibilities with reference to third persons, of a kind to make it the duty of civil society, if civil society be conceived of as having any duty at all, to require some kind of marriage contract for the purpose of distinguishing married persons and fixing their marital responsibility.

One of these obligations relates to the civil rights of the parties themselves. The thought is intolerable that either party should be at liberty wantonly to declare their marriage relation at an end without the consent of the other party, and regardless of that other's civil rights which the relationship has engendered. The rights and obligations of the parties to such a relationship may require adjustment by civil society, and in cases of separation they are certain to do so if either party objects to a separation which the other insists upon. In order that civil society may have a foundation for such adjustments, it acts within its proper powers in requiring that the existence of marriages shall be ceremonially declared. Civil society cannot deal with marriage itself. It can deal only with the resulting civil obligations, and to do this it needs the civil basis of a conventional contract. If, then, it may under any circumstances be properly called upon to adjudicate

with reference to marriage, it may properly require conventional marriage as a condition of recognizing marital rights.

Another of the obligations in question relates to the rights of children. Although it cannot fully protect all such rights, it may stimulate respect even for the most fundamental and primary ones. The primary right of every child is a right to legitimate birth. This phrase is used in no mere conventional sense. By legitimacy of birth is meant not legal but natural legitimacy. Every child has a natural right, unless human marriage is indeed no higher in the realm of nature than the level of bestial passion, to be born of a real marriage. This implies a right to legitimate parenthood, natural and complete; not only to a human as distinguished from an animal mother, but also to a human as distinguished from an animal father. This is one of the rights that cannot be fully protected by civil society. It is a right for the protection of which children are dependent upon the marital fidelity of their parents—marital fidelity of a purer kind than fidelity to mere conventional marriage vows. But while civil society cannot protect the natural right of children to legitimate natural parenthood, it can foster regard for it and protect such social and civil rights of children as naturally spring from

parenthood. By exacting ceremonial contracts in testimony of marriage, civil society can at least secure to children, as a rule, the conventional relations and fostering care of complete fatherhood and motherhood, and thereby their protection.

This overguardianship is an obvious duty of organized society if the legitimacy of social organization be granted for any purpose. Without social organization society would unquestionably assume the duty, acting as a mob; and that goes far in itself to prove it a normal social function. And surely if any citizens are entitled to the interference of civil society for the protection of their rights, children come within the category. Although their natural guardians are their parents, and parental love may usually be depended upon best to serve the interests of children, yet children have rights even against their parents. The conservation of those rights must be a proper function of civil society, if anything is, and this fact alone justifies the requirement of ceremonial contracts. In order that civil society may properly perform its duty with reference to obligations growing out of the relation of parent and child, the civil status of complete parenthood must have conventional expression through conventional marriage.

Another of the obligations engendered by

marriage relates to the rights of third persons other than children. To know that the relationship is in some certain manner accepted by both parties to it as an enduring marriage, may be of serious social importance. Since marriage is a natural social relationship, and can exist only between one man and one woman at the same time, every member of society has a right to know, by fixed tests, whether unions apparently marital are so regarded by the parties to them. This is demanded for general good order, if for nothing else. Many examples of its necessity might be cited, but a bare allusion to the disorder resulting from marriages not conventionally declared is enough. Not only might paternal irresponsibility as to children ensue, not only might cruel injustice by one marital companion to the other be possible, but wretched deceit of third persons by either might be successfully invited.

There is in reality no force in the counter-argument that sexual relationships are matters of private and not of social concern. Even if it were conceded that civil society has no right to regulate individual morals, and therefore may not prohibit concubinage, nevertheless it would have the right to distinguish, for social and civil purposes, between concubinal and marital relations.

The fundamental reason for conventional

✓ marriage, however—metaphysical, perhaps, yet not whimsical nor fanciful—rests upon the fact, heretofore considered, that the husband and wife in a genuine marriage, whether conventionally declared or not, constitute in a very important sense the social unit. Although it is true that the individual is the primary unit, yet social life begins essentially with the coming together of one man and one woman in marital union. With that conjunction, therefore, society is directly and profoundly concerned. If any personal acts may need public avowal in the interest of society this must be one. Secrecy would be totally inconsistent with marriage as we have defined its nature. Although a true marriage might exist in secret, secrecy is not normal to marriage. A relationship which implies the standing forth from the mass of men and women, of one man and one woman as a social unit, is obviously of a nature, if anything is, to demand public declaration of its existence and public assumption of its social and civil duties.

That civil society may properly exact ceremonial marriage contracts publicly declaratory of the assumed relationship, to which questions regarding civil rights and obligations growing out of marriage may be referred, is a proposition which gains in strength as it secures consideration.

Passing, then, from the propriety of exacting a ceremonial contract, to the subject of its scope, we should suppose that the contract ought to be expressive of the essentials of marriage itself. That is, the contract should be a mutual agreement between the parties, for mutuality is of the essence of marriage; it should be publicly declared, for that makes one of the necessities for a ceremonial; it should proclaim the parties to be and invoke society to regard them as husband and wife, for that is the thing necessary to be publicly known; and it should be in terms of perpetuity for life, to express the fact without which no sexual union is a marriage, namely, that it is cemented by unifying love abiding in its nature.

The ceremonial contract cannot be in its terms temporary. That would be a concubinal contract, not a contract of marriage. Although temporal marriages may in fact die during the lifetime of the parties, yet, as temporal marriage is abiding for life in its nature, the marriage contract must be couched in corresponding terms. A contract for an hour, a day, a week, a month, a year, or at will, would be repugnant to the abiding nature of marriage, in the sense of being inconsistent with it. Instead of declaring a marriage, it would be declaratory only of con-



cubinage. Whether concubinage is a bad thing or not is immaterial to the point under consideration. All that is necessary here is to recognize that concubinage and marriage are essentially different things. That they are, need only be stated to be acknowledged. This being so, the conclusion is obvious that a contract declaratory of concubinage is not a contract declaratory of marriage.

Contracts of marriage, to be consistent with the theory of marriage already outlined, must possess the characteristics specified above—mutuality of agreement between one man and one woman, and public avowal thereof in terms of perpetuity for life.

So much conceded, it follows that civil society, in the exercise of its function of exacting ceremonial contracts of marriage, may inhibit the making of later contracts while earlier ones subsist. In other words, upon the theory that marriage is naturally monogamic, and that civil society may exact conventional contracts, civil society acts within its proper scope in forbidding bigamy—bigamy being understood to mean the making of one conventional marriage while a previous conventional marriage is unrevoked.

The proposition calls for no extended argument. If but one genuine marriage can subsist

at a time, if conventional marriage rests upon and is expressive of genuine marriage, and if conventional marriage is a life contract affecting the rights of each of the parties with reference to the other and of third persons with reference to both, then there can be no second conventional marriage during the lifetime of either party to a former one, without a violation of rights that civil society is bound to protect and obligations which it has undertaken to enforce, unless the former conventional marriage be ceremonially dissolved by divorce.

Whether civil society may by divorce properly dissolve conventional marriages, doing so upon the application of one of the parties and after hearing both and duly considering and conserving all rights and obligations, still remains an open question in this discussion.

## CHAPTER VI

### DIVORCE

**G**RANTING that society may properly exact binding contracts of marriage, and may inhibit the making of a second marriage contract while a previous one subsists between either party and a third person, questions regarding divorce arise.

The first question relates to divorce simply as a decree of nullification, regardless of its bearings upon successive marriages. In considering this question, we are confronted with the third and fourth of the five queries heretofore reserved for examination, namely:

Three. If society has the right to exact binding and exclusive contracts of marriage, has it also the complementary right to annul marriage contracts?\*

Four. Assuming society to have this right of nullification, may the parties to the contract or declaration of a marriage which has come to an end through the dissolution of the unifying love that made it—may they themselves, or either of

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\* See page 45.

them, properly call upon society to annul the contract?\*

In harmony with what has preceded, conventional divorce must be correlative to conventional marriage. To think otherwise is difficult, if not impossible, without ignoring the essential difference between ceremonial marriage and natural marriage, between the symbol and the thing symbolized.

If there were no such thing as natural marriage back of the conventional, if it were the ceremony and that alone that constitutes marriage, then, indeed, divorce might not be regarded as a correlative of marriage; for in that case marriage would be an arbitrary custom, not a natural principle, and arbitrary custom alone would consequently determine the legitimacy of divorce. It might even abolish marriage altogether. But the ceremonial theory is too paganistic, not to say materialistic, to demand attention in any discussion in which marriage is regarded as a vital reality. The materialist may consider divorce as raising only questions of expediency. The pagan may regard it with superstitious horror. But he who is neither pagan nor materialist must bring it to the test of ideal principle.

Doing this, he sees that marriage consists not

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\* See page 45.

in conventionality or contract or ceremonial, but in an ideal relationship, of which ceremonials are only the symbols or outward expressions. As to divorce, then, the primary consideration with him is not whether the ceremonial of marriage is an indissoluble contract, but whether the ideal relationship is indissoluble in its nature.

If he finds that marriage is in reality constituted not by ceremonials but only by marriage love, and that marriage love, although abiding in its nature, may nevertheless die, he realizes that the ideal relationship itself is not indissoluble. Thereupon he concludes that when the natural force of marriage love, which alone makes a marriage, is dissipated by natural law, the marriage itself is dissolved by natural law. With that principle to guide him, divorce ceremonials take their place in his mind by the side of marriage ceremonials. Reasoning that there ought to be some ceremonial of conventional marriage whenever there is a real marriage, he reasons in like manner that there ought to be some ceremonial of conventional divorce whenever there is a real divorce.\*

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\* The Rev. Charles F. Dole, a distinguished Massachusetts clergyman, makes an excellent presentation of the Unitarian view of marriage and divorce in a letter published in *The Outlook* for Oct. 21, 1905, explaining and defending resolutions of that denomination which had been adopted at its Atlantic City conference. Mr. Dole declares in this letter that "in the best modern thought marriage is regarded as a relation constituted essentially by the love of the two

The correctness of that view cannot reasonably be disputed, on the basis of what has preceded in this discussion. Grant that natural marriage is ideal and not merely conventional, being created by marriage love and not by a ceremonial; grant that the ceremony of marriage is a useful conventionality publicly declaratory of natural marriage; grant that natural marriage may end in natural divorce because the marriage love that sustains it has died, grant these propositions, which we have already advanced with reference to marriage, and the propriety of conventional divorce must be conceded. The ceremony of conventional divorce is to natural divorce what the ceremony of conventional marriage is to natural marriage—the declaration or symbol whereby society may be advised of the true relation of the parties as they themselves regard it.

By what means, then, if conventional marriage may be dissolved, shall the ceremony of conventional divorce be performed?

To remit it to church control would be grossly improper. Churches have no coercive function in the matter. They cannot prevent that natural

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persons concerned." It is their marital love, he holds, that constitutes the real marriage sacrament; and while he honors the ceremony as "the outward expression of the inward purpose of the husband and wife," he denies that the ceremony constitutes the marriage. Accordingly he asserts that the legitimate aim of divorce law is "to recognize the fact that, under certain more or less unbearable conditions, real marriage does not exist."

divorce which results from death of marriage love, and they must not be permitted either to grant or deny conventional divorce. Their only function is that of spiritual influence. In so far as the parties may voluntarily submit to be ecclesiastically governed, and the rights of society as a whole are not infringed, churches may either regulate or prohibit divorce; that is, they may freely appeal to the individual conscience. But there their function ends.

Nor should conventional divorce be left to the control of the parties themselves. While they alone can decide whether there is a real divorce or not, just as they alone could decide whether there was originally a real marriage or not, all this being in the nature of things, yet the ceremonial of conventional divorce affects civil rights in such manner as to entitle all concerned to their "day in court." These rights might be jeopardized if married persons were allowed to proclaim natural divorce at will, and without adjudication to assert conventional divorce.

Society, therefore, as well as the parties, being affected by the contract of marriage, must be consulted about its abrogation. Though only a symbol or conventionality in comparison with marriage itself, the marriage contract is more than a conventionality with reference to society.

In that relationship it is a compact, defining personal and social obligations and duties from which neither of the parties, nor both together, may with justice be allowed to release themselves. They must appeal to organized society as the general guardian of civil rights.

Since it is conventional marriage and not ideal marriage to which conventional divorce applies, and conventional marriage derives its civil force and vitality from organized society, organized society may with propriety regulate the terms of conventional divorce. If it may not, then it is difficult to conceive of organized society as having any function at all. Like the churches, society is powerless to dissolve natural marriages. Only the parties can do that. If a natural marriage truly exist, nothing conventional can dissolve it; if it do not truly exist, nothing is necessary to dissolve it. But whether a natural marriage truly exists or not, conventional divorce does dissolve, and nothing else can dissolve, the marriage contract; and civil society, upon the application of either party to a marriage, with evidence that the natural marriage of the parties has probably ceased to exist, acting withal in the interest of social and civil rights, ought to consider the propriety of decreeing a dissolution.

The suggestion that divorces ought to be



granted by civil society upon the application of either party, even without proof of marital crime, probably requires special consideration. For it may be thoughtlessly objected that this degree of freedom would place it within the power of either husband or wife, against the will of the other, to bring their conventional marriage to an end. But the objection would really raise no new question, and must fail on every possible ground except that divorce should not be allowed at all. It gains no support from the principles of natural marriage which underlie and give vitality to conventional marriage, for natural marriage depends upon mutuality of marriage love and no longer exists when either party's marital love is dead. Neither does it find support in present custom, nor in the contentions of advocates for strict divorce laws. Even under present custom the abrogation of the conventional marriage tie is made upon the application of only one of the parties, often if not usually against the will of the other; and those who would allow divorce on what is termed "the scriptural ground," would allow it upon the application of only one of the parties and against the will of the other. How do such cases differ from the suggestion made here? Only in one respect, namely, that in those cases the applicant for divorce must prove a marital offense

against the other party, whereas the suggestion here requires no ground other than the will and deliberate declaration of the applicant. But that difference supports no objection to an application by only one of the parties. It merely presents in another form the general question of whether the conventional marriage tie shall be abrogated at all except for an overt marital offense. If the tie may be abrogated at the will of both parties, it may be abrogated at the will of either. The essential question which confronts civil society in any case is whether the natural marriage is at an end. And is not the deliberate declaration of one of the parties as good evidence of that fact as the declaration of both? Furthermore, would not either be better evidence of death of the natural marriage than proofs of an overt marital offense would be? Offenses may prove no more than temptation and weakness, not necessarily inconsistent with continuance of marital love; but public declarations, deliberately and formally made, leave little room for confidence in the continuance of that love without which conventional marriage is but a pretense. But the principle at all times to be clung to is that the function of civil society in these matters is to enforce, not religious doctrines but reciprocal civil rights and duties, and that in the abrogation of conventional

marriage ties on any ground or under any circumstances, the civil rights of all persons must be conserved. From this principle it follows that while the state may grant divorces on the application of either party as well as of both, it must act with due regard for the civil rights of the other party.

Objections to divorce upon the application of either party will be found really to rest not upon the *ex parte* initiation of the proceeding nor upon the annulment of the marriage, but upon the question of marriage after divorce. If that question were not involved there would be nothing startling in the suggestion that marriages be annulled upon the application of either party and without proof of a marital offense. This is evident from the fact that the long established custom of granting divorces so limited as to make subsequent marriage during the life of the parties an act of bigamy, excites no criticism. But the question of divorce is one question, the question of freedom to marry after divorce is another question; and we are not now considering the latter. The first of these questions must be disposed of by itself, free from all entanglement with the second, before the second can be intelligently considered. The suggestion now before us is not whether permission to marry after divorce shall

be granted upon the application of either or both parties, or with or without proof of marital offenses; it is whether conventional marriages shall be annulled by the state upon the application of either party and irrespective of permission to remarry, provided the civil rights of all persons, including those of the other party to the marriage, are conserved.

Though dissolution of conventional marriage be decreed; it does not necessarily follow that either of the parties may with propriety, during the lifetime of the other, contract a succeeding conventional marriage with a third person. The right to prohibit a second conventional marriage while the prior one subsists, may not unreasonably be regarded as implying that there is likewise a right to prohibit such marriages even when the prior one has been nullified. But whether this prohibition would be defensible is not now to the point. The question immediately under consideration is not the propriety of second marriages after conventional divorce; it is the propriety of conventional divorce itself.

And what reasonable objection to conventional divorce can be advanced? Considered simply as nullification, it does but cancel the civil obligations which conventional marriage imposes. And this only upon the best proof the nature of

the case admits of, that the conventional marriage is no longer truly symbolic of a natural marriage and has consequently become a lifeless pact. Conventional divorce does not affect the problem with reference to ecclesiastical authority, nor to conscience in any other respect. Even though the law permits marriage after divorce, it only permits, it does not compel it. The domain of conscience is not invaded.

✓ The whole problem of conventional divorce, considered simply as nullification, resolves itself into a question of civil regulation for the protection of rights. The rights of each party to the marriage contract must be conserved. So must the rights of children. So, also, must the rights of society as a whole. This done, however, there is no good reason why the conventional marriage should not be dissolved, if the parties avow, or either of them avows, that the natural marriage no longer exists.

→ So far, indeed, from there being no reason why in such circumstances it should not be dissolved, there are imperative moral reasons why it should be dissolved. James Bryce was right when he wrote:\* "Nor is the morality of any country to be measured by the number of divorces. Its condi-

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\* In a series of articles on the United States, originally appearing in *The Outlook*.

tion may be really worse if people cynically abstain from obtaining divorces where there are grounds for obtaining them." And Robert Grant was right when he said:\* "The clergy may platitudinize at will over the evil of divorce, but there is another side to the question. The evil of loveless marriages could have things said about it that would sound very logical."

To enjoin submission to conventional marriage bonds, where there is no natural marriage, what is that but to sanction and encourage an adulterous relationship? The persons so enjoined, though nominally married, are they not really unmarried? If their intercourse is to be regarded as chaste, then chastity is only a thing of conventional ceremonies and not a principle of natural purity.

How vastly better would it be to grant divorces at the suit of either party, the civil rights of the other being judicially considered and conserved, than to continue the prevailing practice of granting divorces only on proof of marital offenses. Illustrations are abundant; let us select but one: In 1905 a notorious divorce suit was tried in Ohio upon the application, as usual, of only one of the parties, who alleged a marital offense—an offense of such a nature that it is com-

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\* In a newspaper interview, March, 1905.

monly regarded, even by the most strenuous objectors to liberal divorce laws, as constituting sufficient grounds for divorce. After a scandalous trial, reports of which were thrust into every household in the land through the daily press, the application for divorce was granted. To this day it is doubtful whether the alleged offense was in fact committed. If it was not committed, a grievous wrong has been done; whether committed or not, one domestic shadow has been further darkened, and with no advantage to society.

Suppose that the party seeking divorce in that case could have been told, when he offered proof of a marital offense, that the divorce court was sitting to protect civil rights, and not to supply a sluiceway for marital scandals. Suppose the judge could have said to him: "I am not sitting here to determine whether your wife has committed a crime against society. If there is a reasonable probability of her having committed such a crime the proper tribunal is the criminal court, with its juries to decide and its penal institutions to punish. Neither am I sitting here to decide whether she has offended you, or whether your natural marriage is certainly dead. My function is to determine first, whether you really believe that your natural marriage is dead, and

therefore deliberately wish to annul with legal formalities the civil tie of your conventional marriage; and, second, in case of authorizing those formalities, to protect all the civil rights that spring from the obligations of that tie." Suppose something like that could have been said to the applicant in that Ohio case, would it not have been better for the applicant, better for his wife, better for their children and better for society, than the cruel and scandalous proceedings which the applicant invoked and the judge was by a strict system of divorce laws compelled to conduct?

So warned, applicants for divorce would be face to face with the responsibility of passing solemn judgment for themselves upon the question of the vitality of their natural marriage. They would be more likely to sound their own consciences deeper and with less rancor than when invited to make a parade of their real or fancied marital wrongs. Their fighting blood would recede, and with a cooler sense and fuller appreciation of personal responsibility than is possible in the heat of anger and the excitement of litigation, they would be more likely to consider whether forgiveness were not better than divorce.

It often happens, no doubt, that young peo-



ple who marry in the honest conviction that they are brought together by marriage love, but who are in fact attracted only by external affections, personal and selfish\*, do grow into genuine marriage if they retain their marital relationship. For marriage love is a growth, an evolution. In spiritual thought and phrase it is "a result of regeneration;" but on the plane of our principal inquiry, the term "growth" or "evolution" expresses the essential idea. The processes of this growth may in many cases include among its phases the birth and decadence of selfish and superficial affections. In such cases, the passing away of the selfish affections would be a necessary prerequisite to the coming in of unselfish and genuine marriage love. Yet it might seem to the marital partners before they were conscious of their new relationship, that their marriage love had perished. One or both might therefore seek a divorce on the ground that their marriage was dead, though in fact it would be just ready to begin to live. Do not the many remarriages of divorced couples testify strongly to the probability that genuinely unselfish marriage love may spring out of the ashes of dead affections of the selfish sort? Inasmuch, then,

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\* See Chapter I at page 7.

as any divorce case may involve this possibility, would it not be infinitely better for all concerned if the courts were to place the responsibility solemnly upon the conscience of the party seeking the divorce, rather than encourage malignant marital litigation over allegations of infamous conduct? In all cases in which the decadence of selfish affections was a phase of the evolution of genuine marriage love, the former course would be more apt than the latter to conserve the marriage relationship. In no case ought the relationship to be coercively perpetuated.

It is a sad mistake to suppose that strict divorce laws are conservative of marriage sanctity. When organized society assumes to hold together what nature has put asunder, for any other purpose or to any greater extent than to protect the civil rights involved—as when, by rigid divorce laws forcing an appearance of marriage where either party deliberately, solemnly, publicly and persistently avers that there is none, it aims to make marriage sacred—it thereby thwarts its own purpose. Difficult divorce makes easy virtue. In so far as marriage comes to be commonly regarded as institutional bondage, just so far does respect for the sacredness of natural marriage give way on the one hand to contempt for its conventional symbols,

on the other to idolatrous regard for those symbols, and on both to indifference or obtuseness toward the sacred thing itself.

It is not by urging upon organized society a rigid enforcement of the marriage tie, that churches can hope to emphasize either the sacredness of marriage or the inviolability of its symbolism. There was much wisdom in the rebuke of a clergyman by an Ohio judge.\* "You take a great responsibility when you grant divorces to almost anyone who happens to ask for them," said the clergyman. "The courts in many cases do not investigate thoroughly and divorces are often granted where they are undeserved by the persons asking for them." He was a divine of considerable importance and prominence and had been a minister for many years. The judge asked: "How many marriages have you performed in the years that you have been a minister?" The minister was proud of his marrying record, and named a great number. "In how many of the cases," continued the judge, "have you carefully questioned the candidates for matrimony, and determined whether they were suited to each other?" "None," was the reply. "How many candidates for matrimony who have pre-

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\* Reported by the Akron (Ohio) Times-Democrat of October 10, 1904, with reference to Judge A. R. Webber.

sented themselves to you have you refused to marry for some good reason?" asked the judge. "None." "You see then," said the judge, "that the courts are not really in fault, and that they are simply trying to patch up the blunders that have been made by the ministers."

We should not advocate impertinence by clergymen asked to perform marriage ceremonies. The parties must be presumed to know better than anyone else, even a clergyman, whether their marriage is natural and genuine. But it is not impertinent to seek assurances that they are making the conventional declaration with a reasonable consciousness of the great natural relationship to which it certifies and which it symbolizes. Certainly there is reasonable propriety in placing the importance of marriage love as a prerequisite to the marriage ceremonial, above the sanctity of the ceremonial as a bar to divorce where the marriage love is dead. It must consequently be proper enough for a clergyman to make such inquiries, for instance, as those which at least one clergyman \* has been accustomed to make. It is reported of this clergyman that years ago he resolved, come what might, he would marry no couple who were unknown to him personally, and

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\* The Rev. Samuel H. Bishop of the Protestant Episcopal Church.

concerning whom he had not some assurance that the prospective union was founded on genuine love. "Not that I designed," he explains, "to put a couple through a detailed examination as to the nature and quality of their love, which would of course be absurd; but I have required some kind of assurance, valid to me personally, that the proposed marriage was not *de convenance*, *de richesse*, or *de anything* else but love."

The tendency of this policy is truly to emphasize the importance of conventional marriage, thereby encouraging sexual propriety, and to exalt the sacredness of natural marriage, thereby conserving sexual purity. But rigid divorce laws rigidly enforced, can have only the opposite effect. Not alone do they foster between persons only nominally married a relationship essentially adulterous, thereby degrading marriage itself; they also discredit conventional marriage by encouraging illicit natural marriages and concubinal alliances.

Simply in the interest of a wise conventionality and marital morality, therefore, divorce laws should make no attempt to perpetuate matrimonial bonds. The solicitude of society, with reference both to the sanctity of marriage itself and the solemnity of the marriage ceremonial, should be confined to protecting the civil rights concerned.

Natural marriage being in any instance dead, the conventional tie should in that instance be severed. When the fundamental fact of a dead natural marriage reasonably appears, society can have no other rational duty in the matter, besides conserving all civil rights, than to nullify the conventional marriage by conventional divorce.

But after all, this conclusion does not probe the core of the divorce controversy. For it is not so much to conventional divorce, considered merely as marital separation, that objection is really made. It is made because conventional divorce permits and is usually followed by conventional marriages between third persons and one or both of the persons divorced. The objection to divorce is only a form of statement. What in truth is hateful to the objectors is conventional marriages after conventional divorces.

Yet, as the propriety of such marriages, though distinctly a problem itself, can be questioned only with reference to divorce, the propriety of conventional divorce, considered merely as nullification of the conventional contract of marriage, needs first to be understood. Divorce does not necessarily justify a subsequent marriage by either party while the other party lives. There is therefore no necessary inconsistency in advocating untrammelled divorce, as we have

done, and yet opposing marriage after divorce and during the lifetime of either party to the divorce.

This distinction may at first seem to be a distinction without a difference. Since the divorce nullifies the conventional marriage, why does not right of remarriage follow as matter of course? How can a nullified conventional marriage logically stand in the way of contracting another conventional marriage? It would not be polygamous, it would not be bigamous. Upon what principle, then, can conventional divorce be distinguished from the right of subsequent conventional marriage? Does not the right of conventional marriage after divorce depend strictly upon the legitimacy of the conventional divorce? These objections seem to be unanswerable; and so far as relates to the propriety, logical or otherwise, of forbidding remarriage, they may be so. But they do not remove the necessity for the distinction we make, as a little further consideration of the subject will show.

There are persons of austere mind who would have the law forbid conventional marriage when one of the parties is afflicted (physically, mentally or morally) in such manner as possibly to injure posterity through hereditary transmission. Among these drastic reformers are some so

extreme that they would have the law step in to make marriage a physical impossibility with such persons. Their propositions are advanced without regard to prior marriage or divorce, the proposed inhibition applying as well to persons who have never been married as to those who have been divorced. Repugnant as these propositions are, they show the necessity for distinguishing between divorce and remarriage, which is the point we are now trying to make.

Some divorce laws go to prove the same necessity. Divorces are not infrequently granted by court decrees which forbid the remarriage of one of the parties to the marriage so annulled. The difference between divorce and remarriage is thereby recognized.

The same difference was recently recognized by a distinguished churchman,\* who ascribed the confusion in the popular mind regarding divorce to obtuseness on the part of those who demand rigid divorce laws. "There is," he wrote, "a profound and widespread feeling that a woman, married to a brute or a beast, though she may not be able to prove the offense which involves his marital infidelity, should be relieved from the degradation of living with such a person; that she should be allowed to remarry is an entirely

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\* Bishop Henry C. Potter, of New York, in *The Independent*.



different question. The two should be made distinct by the law, which could afford relief by granting divorce for cruelty or drunkenness or brutality, as well as for marital infidelity, but which should prohibit remarriage in all cases." Idolatrous reverence for conventional marriage, regardless of natural marriage, is evident in the distinguished churchman's remarks about the degradation of living with "such a person." Is it any more degrading to live with a cruel, drunken or brutal husband than to live with one who is not cruel, drunken nor brutal, yet whose marital title is no longer sanctified by marriage love? This, however, only in passing. The churchman's recognition of the difference we have endeavored to distinguish is the point in hand.

Notwithstanding that the right of marriage after divorce seems to follow logically from the divorce, it is evident that the police power of organized society must be reckoned with, and that under this power and upon the assumption that it is for the common good, marriages may be prohibited as well upon the ground of previous marriage, divorce or no divorce, as upon any other ground. Separate consideration of the subject of divorce, and of marriage after divorce, as independent subjects, is thereby necessitated.

## CHAPTER VII

### MARRIAGE AFTER DIVORCE

WE now confront the crucial question regarding divorce, the question on which the whole controversy over divorce really hinges. It is the last of the five test questions heretofore reserved for consideration seriatim, namely:

Five. Is either party to an annulled marriage contract properly at liberty, while the other lives, and not only as matter of naked legal right but also with reference to the just censures of public opinion, to enter into a marriage contract with a third person?\*

The distinct question thus at issue is whether conventional marriages after conventional divorces ought to be tolerated during the lifetime of either party to a divorce.

That they ought to be prohibited when there is no divorce, and the previous conventional marriage subsists, we have already urged; the reason being that inasmuch as conventional marriage is

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\* See page 45.

merely symbolical of natural marriage, and as two natural marriages of the same person cannot subsist at the same time, therefore two conventional marriages cannot properly so subsist.\* There can consequently be no second contract of marriage, with propriety, until the prior one has been annulled.

✓ We have further insisted, however, that upon the dissolution of a natural marriage by the death of the marriage love that makes it, society ought to assent to a corresponding dissolution of the corresponding conventional marriage, with only so much reservation as may be necessary to conserve all the civil rights involved.

We now contend that when this dissolution has been ceremonially declared, the civil bar to subsequent marriage should be thereby and thereupon removed. The natural marriage is dead; it died with the death of its vitalizing love. The conventional marriage also is dead; it died with the conventional divorce. The parties, therefore, are now unmarried. They are unmarried both naturally and conventionally. Each is as completely and truly unmarried as if the other had physically died. Except, then, upon the abhorrent theory that society should establish a system of meddling paternalism regarding mar-

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\* See pages 60, 61.

riage, each of the divorced parties ought to be, in so far as civil coercion is in question, free to enter again into natural marriage and to proclaim it by conventional marriage.

True, back of these civil considerations there are ecclesiastical ones. But they must be left to the churches. Churches are as much entitled as any other voluntary associations to set up their own rules and regulations; and the rules and regulations of voluntary associations are not legitimate subjects for general debate, so long as they do not assail or threaten the civil rights of outsiders.

With civil regulations, however, it is different. Extremely absurd, not to say invasive in high degree, is it for organized society to forbid the conventional marriage of any person of "sound and disposing mind and memory," whose previous conventional marriage it has annulled. And what organized society cannot properly forbid in this respect, public opinion cannot justly censure.

Grant the propriety of conventional divorce, and you thereby grant the propriety of remarriage, unless you invoke the arbitrary functions of the police power and insist that society should prohibit any marriage which legislators can be influenced to regard as unfit. Prohibition of a

conventional second marriage while the prior one subsists, rests upon the bedrock of marital principle; but prohibition of a second marriage after divorce, rests only upon arbitrary power. This power may, indeed, be invoked; but so may governmental might against natural right in any case. It cannot be invoked, however, without tending to injure the parties, to discredit conventional marriage, to degrade natural marriage, to distort social proprieties, and to demoralize social purity. Like governmental might against natural right in all other cases, arbitrary coercive rules regarding marriage after divorce are certain to react prejudicially upon every good object sought thereby to be attained.

There should be no difficulty in seeing that prohibition of marriage after divorce as a penalty for offenses prescribed as causes for divorce, is a gross perversion of the wholesome principles of the criminal law. This prohibition is in the nature of a penalty as truly as imprisonment would be. Of that there can be no doubt. But if it be a penalty, the offender should be regularly tried for his crime and punished according to the ordinary standards of punishment. Think of the absurd cruelty of adjudging that drunkenness, or brutality, or adultery, shall be punished with a sentence upon the marital offender to remain dur-

ing the lifetime of the other party to the marriage, an unmarried person. Our distinguished churchman quoted in the preceding chapter\* would go further. With apparent insensibility to its grim humor, he advocates the same sentence for both parties—the innocent with the guilty. If cruelty and drunkenness and adultery are proper offenses for legal penalties, let them be punished regularly as criminal offenses; but away with this barbarism of marital outlawry.

Not only is that outlawry absurd—hardheartedly so; it is manifestly inexpedient from every consideration of social order.

One party to every divorce—both parties, if our churchman's idea were to prevail,—though a marriageable member of the community, is forbidden to marry. What is the almost inevitable result but increasing indifference to marriage conventionalities? Natural law is stronger than legislation, stronger even than social institutions. Sooner or later, with a growing army of marital outlaws standing before the fortress of conventional marriage, that fortress will fall.

Consider it. Men are naturally distinguished by passion for sex rather than respect for marriage. They are not without the latter, but it is dormant until the subtle influences of natural

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\* See page 83

marriage awaken it. Women, on the other hand, are naturally distinguished, not by passion for sex but by devotion to marriage. Yet in consequence of natural marriage their dormant sex consciousness awakes as does man's dormant marriage consciousness. There is a resulting complementary union, natural and sacred, of the two lives, masculine and feminine, in all their relations, through which children of legitimate natural birth come into the world, and about which a normal family group is formed. While such a natural marriage survives, the natural tendency is toward an equilibrium of impulses, those that relate to sex and those that relate to marriage. This is in accordance with obvious natural laws—the obvious laws of human nature. But what if a natural marriage prematurely dies, as genuine natural marriages may? What if, though the natural marriage dies, dissolution of the conventional marriage is forbidden, or being allowed is accompanied with a stern decree against remarriage? Sex consciousness has been awakened where once it was dormant, and where love for marriage has lost none of its fervor; love for marriage has been awakened where once it was dormant, and where sexuality is not yet impotent. Yet here are two persons, in full mental and bodily vigor, in middle life or it may

be in youth, forced by law, each while the other lives, either to hug the cold corpse of a former marriage love, or ruthlessly to suppress their awakened and intensified and supremely marital emotions. Their only other recourse, if they escape the degradation of concubinage, is the opprobrium of natural marriage illicitly maintained with a third person.

Does any one suppose that under such coercion this repugnant alternative will grow more repugnant? Then his imagination is weak and his common sense at fault. It will grow less and less repugnant, not only in the minds of those who embrace the alternative, but in the minds of their friends and sympathizers, and so eventually in the common mind. If this is so, then rigidly coercive legal restraints upon conventional marriage after divorce, can have no other ultimate than the breaking down of the present conventional barriers and the creation of a new social theory of sexual ethics. The worst enemies of conventional marriage are not those speculative minds that hold it in contempt, nor those licentious minds that trifle with it, but those paganistic ones that idolize it as sacred in itself, and, forgetting that it is only symbolical of natural marriage, strive to make its bonds unnaturally rigid and galling.



Make no mistake. Inhibitions upon remarriage after divorce deter no persons who believe they are in love from entering improvidently into marriage originally. They have then no expectation of divorce, and no thought of marrying again. Inhibitions upon remarriage are therefore utterly excluded from all their calculations. So far as they are influenced by them, these inhibitions might as well not exist. Their existence can influence none but those who set deliberately about contracting false marriages. Apart from such cases, insignificant in number, they can operate only to prevent the very sensitive from marrying again when natural law urges them to, and to drive the less sensitive into unconventional forms of married life.

If conventional marriage is a useful thing, as we believe it to be, then prohibition of marriage after divorce is inexpedient. Conventional marriage where natural marriage exists is strengthened, not weakened, by liberal divorce laws.

It is also immoral to prohibit marriage after divorce; and for reasons akin to those that make it inexpedient. The inexpedient and the immoral are but complementary sides of the same shield. It is immoral because it tends to the prostitution of marriage functions.

When conventional expressions of natural

functions are arbitrarily narrowed, the functions themselves become distorted. Marriage is not an exception. We cannot with safety to social morals close the door of conventional marriage to men and women whose natural love for marriage, with all that this implies, has been awakened and is in full vigor. Many of the illicit relations that might result, alienated as they would be from the guiding and fostering influences of marriage conventionality, would tend to go far astray, not only from conventional but also from natural chastity. Given a large population of marriageable people condemned indefinitely to a celibate life, and it can hardly be expected, if they formed sexual alliances at all, as many of them almost certainly would, that their tendency under those circumstances would always be in the direction of illicit natural marriage. The stronger tendency might be in other and more deplorable directions. The very illicitness of these natural marriages would have a prejudicial influence. Just as arbitrary legal prohibitions of other things not wrong in themselves invite resistance and so promote indifference to all legal prohibitions, the legitimate as well as the arbitrary, so do arbitrary restrictions upon marriage invite resistance and thus promote indifference even to the moralities of marriage.

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If marital morality is what we would cherish, careful indeed must we be about exposing conventional marriage to the disfavor and indifference which a bigoted theory of this conventionality, rigidly reduced to practice in civil government, would be apt to generate. Concubinage, promiscuity, practical polygamy, shameless prostitution in various forms—these are the progeny not of reasonably liberal, but of arbitrarily strict, conditions of divorce.

It would be unkind to accuse the advocates of enforced celibacy for divorced persons of promoting immorality; they are not intending this. But that this would be the natural effect, increasingly, of strict enforcement of their idolatrous theory of marriage, one needs but to know human nature to realize.

There is a sense much more profound, however, in which it may be said that narrow and rigid divorce laws would propagate marital immorality.

What can be more immoral with reference to marriage than the arbitrary prevention of genuine natural marriages? Yet this is what society and public opinion aim to do when they make divorce a bar to subsequent conventional marriage during the lifetime of either party. The marriages thus forbidden may be in their

nature as abiding and pure and in all respects as true as the holiest marriage ever celebrated. They may even be eternal in their abidingness,—who can tell? But their conventional expression, which is to natural marriage what personal reputation is to personal character, is arbitrarily forbidden. The divorced man or woman, therefore, who is sensitive to marital reputation and shrinks from exposing a marriage of good character to the bitter ordeal of bad repute, must forego remarriage itself or cultivate a spirit of defiance or indifference toward the conventionality which is thus tyrannical. How is it possible to force upon anyone this cruel and demoralizing dilemma, without offending grievously against marital morality?

Marital morality is not wholly negative. It does not consist altogether of “thou-shalt-not” commands. On the contrary, it is primarily and tremendously affirmative. The command, “Thou shalt,” is addressed by Nature and by Nature’s God to every man and woman who mutually understand that they are drawn together by genuine marriage love. Of all the commands of marital morality, is not this the greatest and holiest? Surely it is not too much to say to all who in their heart of hearts believe in marriage as they believe in life, that if in the catalogue of

marital immoralities any one may be called the unpardonable, it is the immorality of celibate conditions thrust by public opinion or forced by law upon individuals against their will. Itself a sin of the first magnitude, it hatches out most of the others.

In the language of a worthy and thoughtful clergyman of the Episcopal church, a man who holds marriage among the most sacred of things,\* "society must not condemn men and women to the degradation and debasement, the physical and moral wreckage of individuals in forced union, nor as an alternative, to the perpetual sterility of lives that might be happy and useful and fruitful." He has further said, as wisely and strongly, that its doing so is "absurd, ridiculous, immoral and full of the most portentous and evil significance to our social and domestic life;" that "it means that a man may drag his wife through the foulest gutters, may debase and debauch her in body and soul, may make life a perfect hell to her, and she has no remedy except separation, permanent widowhood, and prohibition of all possibility of gaining human happiness and true love while she and he live on earth."

The subject of divorce and remarriage is not

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\* The Rev. Samuel H. Bishop.

fully considered, of course, until its relation to the children of the dead marriage has been discussed. We refer now to something more than the civil rights of the child. As to civil rights, the child of a dead marriage stands upon the same plane as any other member of the community. The civil rights of all third persons must be conserved. But with reference to the children of a sundered marriage, there are said to be such additional considerations as a broken home, a consciousness of the wrenching apart of one parent from the other, and, if one of the parents remarries during the life time of the other, a sense possibly of moral degradation. It may well be asked if this is a good experience for childish minds, and whether children are not entitled to protection from its demoralizing influences?

The conclusive answer is the simple one that civil protection from those influences, even if it were desirable, is impossible. If demoralization and degradation of children be involved, this is due to the natural divorce of their parents, over which municipal law has no control, and not to the conventional divorce, which merely makes legal acknowledgment of a natural fact.

The home—possibly not the household, but certainly the home—is broken when the natural

marriage dies. The wrenching apart of one parent from the other occurs when the warmth of the marriage love departs. The degradation of the children begins when the marriage of their parents sinks from its high estate down into the mire of legalized concubinage, and it continues while that unwholesome relationship lasts.

If parents naturally but not conventionally divorced avoid concubinal association by separating, they thereby exhibit to their children the same picture of a broken home that would be presented if they were divorced. If they are not divorced and do not separate, they display to their children who perceive their marital alienation, an indescribable example of subtle immorality.

In comparison with a concubinal relationship masked in the conventions of an unsundered marriage, the remarriage of a divorced parent must be infinitely the less demoralizing to the mind of a child. The mask is too thin to deceive even children. Back of the artificial appearance of a living marriage which it presents, the sensitive affections of the child will not fail to detect a repulsive corpse.

Children who love both their parents may recoil from divorce and deplore the marriage of either to a stranger. But if this remarriage be a

true marital union, sanctioned as well by natural as by municipal law, whereas the original marriage, though sanctioned by municipal law, has become essentially a prostitutional alliance, who dare say that the former is to be avoided and the latter perpetuated in the interests of moral education? Is the morality of children to be best conserved by the enforced immorality of their parents?

So long as parents who suppose that their natural marriage is dead, voluntarily perpetuate their marital relationship in good faith for the benefit of their children, we should be slow to believe that it would not be morally effective. Their example of devotion might well outweigh in the children's minds all opposing influences. It might react upon the parents themselves, generating genuine marriage love in the place of what was once supposed to be genuine, but in fact was spurious. As a voluntary act, then, abstention from conventional divorce and remarriage may have saving virtues. But to compel this course by municipal law is offensive to morality and degrading to the sanctity of marriage.

And compulsion is after all the real issue. Our question is not whether the parties to a marriage naturally dead shall for any reason—



whether for the sake of respectability, for the sake of property rights, for the sake of their children, or for any other cause—continue to mask its death behind the conventional marriage. The question is not whether they ought to separate, or ought to secure a divorce, or ought to marry after divorce. Those questions are personal to the parties themselves. They know best whether their natural marriage is dead. They know best the possibilities of its natural restoration. They know best whether it were better for their children that the household be held together though the home be gone. They can best balance the little facts and subtle considerations which are necessary to determine whether, under all the circumstances, a life of post-marital concubinage is preferable to conventional divorce and another marriage. If they decide voluntarily against divorce and remarriage, doing so in good faith, their choice is to be respected. But to compel them by law, or to frighten them by ecclesiastical denunciation, into adopting that course against their will and their judgment, is a different matter.

It is not within our province to discuss ecclesiastical denunciations. There is a sense in which these fall into the category of voluntary action. No one need heed them unless he wills

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to do so. But the municipal law is compulsory upon all persons within its geographical jurisdiction. It leaves nothing to individual volition and must not be used to enforce ecclesiastical denunciations.

To attempt by municipal law to perpetuate the form and force of conventional marriages for the life of the parties, is in reality to attempt to create a more or less subtle union of church and state. It is to endeavor to put into the civil law some concept or other of spiritual obligation. This clearly appears, for instance, in the contention that the state should grant no divorce except upon what is called "the scriptural ground." The authority for that contention is found in Matthew, chapter five, verses 31 and 32, and chapter nineteen, verse 9; and in Luke, chapter sixteen, verse 18. We need not enter into the disputes of Biblical scholars over the true meaning of those texts, for if the state were to enforce any interpretation of them, it would thereby overlap its legitimate functions and to a degree enter into a union with the church. Yet we may modestly suggest that if strict construction of the current English version were to prevail, the argument for limiting divorce in accordance with those texts would defeat itself by proving too much; for if the texts forbid divorce except for

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adultery, it is only to men that they allow it even for that cause; they forbid divorce to women altogether. To regard those texts strictly construed as setting up the true test, is to take the absurd position that a man may divorce his wife for infidelity, but that a woman can not divorce her husband even for infidelity the most vicious and flagrant. This point is not captions. At the time when the words of the cited texts were uttered, the husband could sever the marriage, but the wife could not. She was irrevocably bound. Then came the commandment of the texts. But that commandment only narrowed the divorce privileges of the old law in its application to men; it neither made a new law for women nor extended any of the divorce privileges of the old law to them. But irrespective of this consideration, on no interpretation of any scriptures ought the state to coerce individuals to conform to spiritual doctrines of any kind. The enforcement of any concept of spiritual law by civil process is to that extent just as truly a union of church and state in the objectionable sense as is an organic union of ecclesiastical and civil establishments. Persons who accept spiritual conceptions of the marriage relationship should of course be free to live in accordance with them, provided they comply with the legitimate conven-

tionalities of organized society for the enforcement of reciprocal rights and duties; but no men should ask or be allowed to force any of their fellow citizens to obey their conception of spiritual duty as distinguished from the moral law of reciprocal rights and duties, by means of the coercive machinery of the state. Municipal law, therefore, is to be condemned if it coercively perpetuates conventional marriage between persons whose natural marriage is dead, or forbids remarriages of persons whose former marriage is conventionally sundered.

The substance of it all is this: That marriage is a natural relationship which is properly required to be figured forth by a conventional expression of its existence. That the natural marriage may die as well before as with the physical death of either party to it, and that when it does so die the conventional form ceases to express marriage and becomes a mere mask for post-marital concubinage. When voluntarily worn this mask may serve on the whole a useful purpose. It may indeed resurrect a dead marriage love, or generate genuine marriage love in place of decadent selfish affections. But the parties themselves, who alone can fairly judge of that, must be left to decide. They must be free to determine whether or not they will per-

petuate a conventional marriage after the natural marriage to which it originally certified has ceased or seems to them to have ceased to exist. Consequently, organized society, while it may properly require conventional declarations of marriage and may properly prohibit two or more conventional marriages concurrently, must not forbid reasonably liberal divorces, nor prohibit conventional declarations of marriage by divorced persons. This conclusion rests upon considerations alike of social expediency, of individual freedom, and of natural morality. It will bear the test besides of the highest known spiritual standards.

## CHAPTER VIII

### THE SANCTITY OF MARRIAGE

**T**HE natural sacredness of marriage demands further consideration of our subject in a manner wholly affirmative, as if divorces were unknown or only vaguely possible. To that demand this concluding chapter is intended to be in some measure a response.

Marriage itself, which is constituted by the harmonious union of one man and one woman through reciprocal love abiding in its nature, is a natural human relationship. It is as natural as motherhood and fatherhood, to which it is Nature's condition precedent.

On the physical or animal plane of human life, this is too obvious to require elucidation. The intimate physical union without which procreation is impossible, furnishes its own demonstration of its own indispensability to fatherhood and motherhood. Describe that relationship as only the expression of a momentary animal impulse if you will, yet the fact remains that even then Nature is seen to declare for

monogamy, for unity, for reciprocity, for affection, and in many ways to suggest the idea of abidingness.

But man does not live upon the physical or animal plane alone. Though we brush aside all thought of human immortality as an idle speculation, we cannot escape the obtrusive natural fact, a fact in the domain of human nature, that man possesses moral as well as physical qualities.

You may say, if you will, that moral qualities are nothing but modes of the physical; as for instance, that the impulses of human marriages are only poetizations of animal matings, and that the impulses of human motherhood are the same affections in kind as those of the dam for her cub. Nevertheless, as none can deny that human action is often determined by disinterested love of another than one's self or one's own, and by devotion to ideal standards of right and justice, it makes no difference if such love and devotion be characterized as impulses originating in the physical, or as mere phases of selfishness. We do not get away from the essential thing by changing its name or surmising its origin. The crucial facts themselves remain. Men and women do act from motives of love for others than their own; they do have regard for equality of rights.

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Even if temptations to be selfish often pervert their conduct with reference to the principle of equality, even if temptations to falsely appear unselfish often distort their perceptions and their expressions of that principle, they do set up and support moral ideals. Whence those ideals come, and whether they are perfect, are immaterial considerations. The determining facts are that the ideals exist, and that their tendencies are altruistic. Every one is conscious of moral impulses to which he often yields,—impulses to turn from selfish comforts and interests, even to the extent of sacrificing his own life, in order to maintain humanitarian standards. These facts prove, not necessarily that human life has a moral origin, to be sure; but incontestably that it advances upon a moral as well as upon a physical plane, in response to unselfish as well as selfish impulses, and with reference to altruistic as well as egoistic natural law.

Possibly some of the lower animals have exhibited identical traits. Let him who believes this believe it; it does not affect the question. If any of the lower animals do exhibit moral traits, then those animals, too, live on a moral as well as a physical plane. But whether animals live upon a moral plane is not to the point. The point is that man indisputably does live upon such a plane.



Regardless of whether it may or may not be so with any of the lower animals, man is clearly both a physical and a moral being.

It is this moral quality that transmutes what might otherwise be the indiscriminating sexual attractions of man's animalhood, into those indescribably tender and chaste affections and those subtle human harmonies which give to genuine marriage its distinctive character in the apprehension of all those multitudes who experience its satisfactions and foster its unities.

The secret of marital happiness is only suggested or crudely symbolized by that union of sexual opposites in which mere animal or physical mating consists. Since man is an animal, physical union is indeed one of the conditions of human marriage; but inasmuch as he is more than an animal, there are other and higher and equally indispensable conditions. Not only are mankind masculine and feminine physically in their bodies, as are the lower animals, and mentally in their modes of thought, as also are the lower animals though in lesser degree; they are likewise masculine and feminine morally in the modes of their altruistic affections. And just as sexual duality physically may bring together one man and one woman in obedience to procreative animal impulses, so may sexual duality on

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the mental and moral planes, bring together that man and that woman, complementaries in moral and mental character as well as in physical form, in obedience to mental and moral procreative impulses. It is this complemental union of sexual opposites on all the planes of human life, mental and moral as well as physical, that constitutes human marriage and distinguishes it from animal mating. Such unions are centers of vigorous family life, and out of them the race not only multiplies but advances.

Physical procreation, however, is the secondary and not the primary object of marriage. It is only the result of a certain kind of life; it is not that life itself. The essential quality of the marriage relation is companionship,\* the most intimate companionship conceivable,—physically, mentally, morally. It is a companionship which can exist only between complementaries. As ✓

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\* "Companionship" may not be the best word for our purpose, since it does not clearly denote associated service to others. If the association and service of the married parties be confined to themselves, it is essentially selfish and therefore not a full expression of marriage love. For marriage love, like any other form of true love, must be unselfish; and to be unselfish it must have an object outside of the lover. The wife as an individual supplies this object to the husband as an individual, and similarly he supplies it to her; but the two as a social unit must have an object for their united love outside of both. In the natural order their children supply this object. In lieu of children or in addition to children, the rest of the human brotherhood affords an object for their united service. Marriage love is not complete in any case until, aglow with mutual association and service, it radiates outward in democratic usefulness to others.

key and lock, such is the companionship of marriage. If it exists on the animal plane alone, it will be only bestial; but if it flourishes also on the mental and moral planes, it will be human, harmonious and sacred.

Are not these suggestions confirmed by psychological considerations? It must be evident to all who reflect upon their own experiences and observations, that the masculine mind is distinguished for what is often colloquially though not very appropriately called "judgment." We say of a man that he acts with good judgment or with bad judgment, meaning that he is a wise man or an unwise man, as the case may be—and this regardless of his learning. Not so with the feminine mind. That a woman's reason is "because," has passed into a good-natured joke. Very seldom do we find ourselves weighing in women what in men we call judgment. We say of a woman that her perceptions are keen or otherwise, but not often that her judgment is good or bad. Individual women are usually thought of, not as having good or bad judgment, nor as being endowed primarily with wisdom. The distinctive feminine quality, as usually observed, is affection. Although women as well as men are acknowledged to possess intellectual qualities, these appear to be subordinate to their

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confiding affections; whereas with men, although they as well as women are seen to be endowed with affectional qualities, these appear subordinate to their wisdom, or intellect—or, as it would ordinarily be expressed, to their judgment.

Nor are such observations mistaken. They are defective only in that they are incomplete. Superficially, the normal marriage relation may be described, not inaptly even if metaphysically, as a union of masculine intellect with feminine affections, coupled with a transverse union of feminine intellect with masculine affections, wherein the masculine intellect is superior to the feminine and the feminine affections are superior to the masculine. But that is true only superficially, and with reference to what we curiously enough call “practical” in contradistinction to “moral” concerns.

When observation goes beyond the superficial or purely “practical,” it discloses a reversal of those relative superiorities. At times of great stress, especially if the stress relate to the deeper experiences which every mature man and woman undergoes in some degree and at some time, it is not the masculine mind that rises pre-eminent in wisdom and judgment, nor the feminine that seems superior in confiding affections. What man is there, for example, who, at some

crisis of his soul, in the presence of an overwhelming temptation or in the midst of a terrible experience resulting from error of judgment or crookedness of conscience, has not beheld with wonder and unwonted affection, a woman's judgment rise out of her affections and tower above his own judgment, even as at such a crisis his affections seem more alive than hers? And when the crisis is over, has he not with equal wonder seen this unusual feminine judgment collapse, and the usual feminine affection resume its accustomed sway? That this is true must be known to every man with a record of soul-trying experiences which he has shared confidently with a good woman, between whom and himself the natural union of genuine marriage has subsisted.

It is hardly reasonable to think of these unusual manifestations as abnormal. Is there not a better explanation? May it not be that in the deeper, the more intensely moral or more spiritual concerns of life, the intellectual qualities of the wife and the affectional qualities of the husband change places of relative superiority? Yet, if that be so, then what more natural than the inference that perfect marriage would consist in a complete equilibrium of feminine affections and masculine intellect with masculine affections and feminine intellect, each individualized, yet all in harmonious union?

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This idea of sex complementaries may be carried far into the realm of the spiritual, where it serves to explain analogically the character and motive of creation. In the words of a thoughtful theologian,\* "It is because God and man are opposite to each other in their attributes, and not because man is inmosty divine, that their conjunction is of such surpassing sweetness." In elaborating the same subject this author writes: "The very essence of divine love, that which impelled God to create, and that which thence constitutes the very substance of all genuinely heavenly love in whatever degree or form manifested, is that it should love some one out of self. To find one's self inherently sufficient unto himself, is to the spiritual man death. To love others, and thus to have the ends and purposes of one's life in the neighbor, is the warp and woof of every love that is heavenly. It is the very end of creation. All true spiritual blessedness consists in a union in love with others. The differences in the nature of those who are the constituent parts of such a union are the very ground of the blessedness. This is illustrated in all forms of neighborly charity, and is in its height shown in the ultimate form of human personality which is dualistic, male and

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\* Charles H. Mann in "Psychiasis."

female; and whose very summit of blessedness is provided for in the heavenly union of these differing parts—that is, in marriage. In his relation to God, therefore, man realizes the blessedness of his own life, not by finding himself to be in his own self-sufficiency God (God forbid!), but by conjunction with Him; and God at the same time realizes the end of his love by union with man.”

Believers in the spiritual, whatever their church affiliations or non-affiliations, cannot but feel the exalted sacredness of marriage when thus considered as the type in human society of God's relations of love to all human kind. Not only does Nature teach its purity through the instincts of those animals that suggest purity to the imagination; but its sacredness is emphasized in its natural symbolism of God's relation to man.

To recognize this exalted sacredness, however, is not necessary for our present purpose. It is enough to perceive that marriage is a sexual conjunction on the moral as well as on the animal plane of life. To perceive this is to feel the human dignity of the position of husband and wife, and the consequent dignity of fatherhood and motherhood. It is to distinguish the human mother from the animal dam. It is to acknowledge the naturalness of monogamous marriage.

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and to realize the natural abidingness of the marriage union. It is to understand that marriage is an expression of a natural law which ramifies the universe of matter and morals, but finds higher expression nowhere else within mortal ken. If that is not a sacred thing, what can be sacred?

Whoever looks upon natural marriage in this reverent way can hardly fail to experience an increasing respect for its symbol—conventional marriage. For it is by that symbol that the marriage principle is made to appear concrete.

That there are those capable of appreciating abstract realities without the aid of symbols, we do not dispute. But most persons appreciate abstract principles better when they are concretely represented. Patriotism is a principle; we represent it concretely with a flag. Religion is a principle; we represent it concretely with church worship. Good will is a principle; we represent it concretely with terms and forms of politeness. Natural marriage is a principle; we represent it concretely with conventional marriage.

All useful conventionalities may indeed be abused. Sentimental regard for a flag may obscure the patriotic principle; idolatrous regard for church worship may make a travesty of the



religious principle; and beneath polite forms of courtesy hatred may take the place of good will. So with marriage. Devotion to conventional marriage may become so idolatrous as to degrade natural marriage. But the possibilities, or even the actualities, of abuse of anything prove nothing against the value of its uses.

Without attempting an exposition of the usefulness of conventional marriage, let us refer to one use which may possibly prove suggestive of many others. In the natural order, marriage takes place at an early age. If it be a genuine marriage, each party is influenced by the principle of marriage love. Yet neither is mature in thought, and both are incapable of analyzing or understanding this principle. They only feel its force. But by contemplating the symbol of conventional marriage they gradually grow into a full appreciation of natural marriage. The symbol is then of no more importance than their wedding clothes. But at the beginning it was of tremendous importance. It created an appearance, a projection, a concretion of the natural marriage principle which was molding their lives together into a dual life unified, and so it served to prevent the possible death of their marriage love in its infancy.

For it is no more in the natural order that

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marriage love should die in infancy than that children should. When children die, we know that some abnormality in their structure or environment has cut them down prematurely. This is true also of marriage love. When it dies prematurely, preventable causes have killed it. Some of these causes are in our time prevented by means of conventional marriage. Possibly all of them might be prevented if conventional marriage were kept in its place as a symbol and never allowed to usurp the place of marriage itself. Though there were no other reason for conventional marriage, this reason alone would justify it. When the dangers peculiar to the infancy of married life are considered in connection with the restraining influence of conventional obligations, it must be conceded that conventional marriage may perform at least one service of the highest usefulness. It strongly tends to prevent marital disasters.

The usefulness and extent of this service might be greatly enhanced by clergymen who officiate at the ceremonies of conventional marriage. Here is the point, rather than in making paganistic demands for strict divorce laws, where the clergyman can serve the holy cause of marriage best. Whenever he is asked to perform this ceremony, those who apply to him do so

either to be conventional or because they recognize more or less vaguely a religious element in marriage which they wish to express by religious symbols. In either case his opportunity is the same. Although he ought not to forbid the marriage though he thinks it false, even if he could forbid it, he ought to advise regarding it.

He could say to the applicants in effect: "You alone can pass judgment on the legitimacy of this marriage, but I am enough in doubt to ask you to postpone the ceremony. If you believe you are indeed marital partners, go to a civil magistrate and declare your conventional marriage. But I advise you to reflect—for a day, a week, a month—and then return to me." This might not prevent unhappy marriages, but it would elevate the general reverence for marriage; and whatever does that, tends to prevent unhappiness in the marriage relation. It would, moreover, have a very strong tendency to dignify the religious ceremony in general estimation.

Or, and this might well be by far the more usual thing, such a clergyman upon performing a marriage ceremony could give advice which, if it were given without cant, would head off many a cause for the premature death of marriage love. He could, for instance, advise the young man and the young woman to say to each other, at least

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once or twice or thrice every day, not only in the honeymoon but throughout life, and no matter what petty irritableness might intrude: "I love you!" This would tend to preserve and stimulate the living marriage love and thereby guard the marriage itself from the subtle advances of indifference. Indifference asphyxiates and kills; it is as deadly to marriage love as diphtheritic germs to babes.

But no phrase, however affectionate or often repeated, can generate love where love has never been, or resuscitate love where love has died. Marriage love can neither be born nor resurrected by incantations; and affectionate phrases, unless they truly express a living love, are only mockeries. An existing natural marriage may be guarded by conventional forms and fostered by loving words; but when it is at an end, the cause of its termination lies deeper down than any words can reach to or any conventionality control.

Some marriages may end for the paradoxical reason that they have never begun. There may have been no marriage love to start with, but only selfishness allied with sexuality, or with family pride, property interests, solicitude for economic support, or something else either wholly alien or only partly related to the marriage principle. These are not genuine mar-

riages, and no conventional forms can make them so. To enforce their perpetuation in form is to enforce sacrilege in principle.

Other marriages may begin genuinely but end prematurely. Though they have marriage love to start with, the marriage love may die. For these marital disasters there is in every case a cause that may be discovered and possibly removed.

Idolatry of conventional marriage is one cause. It tends to make the symbols appear as shackles. Let conventional marriage grow irksome, and marital love is assailed in its most vital part. Another cause is authoritative dominion, usually on the part of the husband. It has a correlative cause in jealousy, usually on the part of the wife. No marriage love can long survive either cause. The husband who rules his wife will soon kill their marriage love, not only in her but in himself; the wife who allows jealousy to enter her heart will not only lose her husband's love for her, for which she supposes she is solicitous, but she will lose her own for him. Another and more subtle cause of the premature death of marriage love is diversity of interests. Interests cannot grow apart and the lives remain together. There can be no mental and moral companionship in mental and moral separation.

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Marriage love can not flourish where the husband is devoted exclusively to his business or his club, and the wife to society and her home.

The last of these causes of marital disaster, diversity of interests, is so little regarded as inimical to marriage, that a somewhat fuller consideration may not be unprofitable. Though it is true that marriage love cannot flourish if the wife is devoted to her home and the husband to other things, this does not imply that the home is not the wife's sphere. It does imply that the home must also be the husband's sphere, and that his other interests must be his wife's too, if their marriage love is to live. That "men must work while women must weep" is not a true idea of the marital relation. No matter what the character of any of the world's work may be, it has both a masculine and a feminine side; and men must devote themselves to the one and women to the other, together and not separately, in unity and not disjunctively, if the work is to be rightly done. It may be that they cannot always, nor even commonly, work side by side; but their work must co-operate.

This is so from kitchen to cabinet. Both men and women must co-operate, not only in the family household but in the communal household—in the government of the community. There-

fore both must vote. It is only in that way, even if there were no other reason, that the masculine and the feminine functions of human society can jointly express themselves. It is not wholesome, either in the personal or the civic sense, for women to influence government merely by personal appeals to their husbands, fathers, brothers, neighbors or dependents. Such electioneering tends to substitute personal for public influences in voting, and therefore tends to corruption. The voter is tempted to betray his civic responsibility; the non-voting solicitor of votes has no civic responsibility to govern her impulses. In this function of government, as in all others, masculine and feminine must co-operate. The male and the female go together, united yet individualized, through all departments of activity.

It was once supposed that women have at any rate no military function; but now we know the value of the feminine element even there.\* There is no exception. In the home, in society, in the club, in the atmosphere of business, unless the masculine and the feminine elements are in them all, the wife tends to grow into an old maid and the husband into an old bachelor—that is, into persons with the intellectual and the affec-

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\* For an excellent elaboration of this idea see Marion Foster Washburne's paper in the *North American Review* for October, 1904.

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tional sides of their nature unbalanced. For it is a narrowed, self-centered life, and not the absence of marriage ceremonies, that makes a man a bachelor or a woman an old maid. Unmarried persons may in great degree avoid this intellectual and affectional narrowness, and so escape the old maid and old bachelor state though single; but married persons can hardly escape it if their intellectual and affectional interests flow apart. It was a wise thought, that of a character in one of Grace Ellery Channing's charming short stories,\* who asked herself if it were possible "that there was no marriage question after all," and if "all that was needed was to be married enough." The best wifehood and motherhood is that which, in co-operation with the functions of husband and father, secures to all the family, including the wife, a wholesome personal and family life, radiating normally into the surrounding social, civic, and business life. The rearing of children demands not that they be coddled by a mother's constant solicitude, often petty and oftener selfish; but that they be made instinctively to feel their co-operative responsibilities as part of a family developing under the uplifting leadership of an intelligent, large-minded, and

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\* "The Marriage Question," by Grace Ellery Channing, *Harper's Magazine*, August, 1905.



broadly interested adult life. No child can feel this unless the mother rises to higher levels and participates in wider activities than those of nursery governess and general housekeeper. The more perfect the co-operation of husband and wife in every sphere of the activity of either, the more wholesome and vigorous in the very nature of things must their marriage love become.

In this idea of marital co-operation is involved the economic independence of woman. Marriage cannot be quite complete while its environment is imperfect. So long as women are not economically independent, other influences than marriage love will create and regulate marriage unions.

Economic independence for women does not require, of course, that the self-supporting woman shall continue earning an independent income after marriage. This is altogether a matter for harmonious arrangement between husband and wife in each case. It would doubtless be a sad mistake for the wife and mother to abolish the home and alienate her life from that of her husband and her children, in order to earn an independent income—as sad a mistake as if she devoted herself to her husband, her children and her home, to the alienation of her own life

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from the wider interests of the world's work and progress. And in most cases she may find that her obligations as home maker, with all that these at the best imply, are too exacting to permit her to pursue a bread-winning vocation besides. There are indeed notable instances to the contrary. Women do earn distinction in business life while rearing children with all a mother's care and maintaining homes with all a wife's devotion. But complete adjustments of home life to business life could not be common under existing social conditions, nor in all vocations perhaps under any social conditions. That fact, however, is not to the point. Whether the economic independence of married women may or may not be generally possible, it is certainly important to the purity of marital selection that economic independence prevail among 'unmarried women.

For only as women are bread-winners can they enter into marriage wholly free from considerations of the necessity of being provided for, and simply in response to the promptings of marriage love.

So long, also, as men are in a struggle for a livelihood—a struggle which seems to be intensified rather than modified by the wonderful advances in methods of producing supplies, and

which must therefore be due to maladjustments in the apportionment of results—just so long will other influences than marriage love affect the marital impulses of men as well as those of women. The economic factor is an important one in connection with marriage. But it has far-reaching problems of its own and cannot be here discussed. Let us simply observe that the economic factor in the marriage problem does not affect marriages among the poor alone.

Given equality of economic opportunity for men and women, each according to their natural functions, masculine and feminine—but according to those functions naturally, and not by standards that make washtubs feminine and lead pencils masculine tools—and, whether among rich or poor, marriage would approximate its ideal of partners in business, chums in amusements, equal parents in the home, equal citizens in the state, co-operative companions everywhere and in everything.

The whole subject of marriage is embraced in the single phrase, "co-operation in equality." Where this principle of the marriage relation is observed on all its planes, no marriage originally genuine can lose its virtues. It will grow onward toward perfection, and all within its influence will feel its beneficence and charm.

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For co-operation in equality implies the subjugation of self from motives of love for another; and subjugation of self by each marital partner with reference to the other, produces and maintains an equilibrium like that state of ideal justice which would prevail in society at large if each individual were to cultivate a spirit of unselfish respect for the rights of every other. As we should then have no wars, no race animosities, no parasitical classes, no poverty, no crime, so in the domain of marriage we should have no marriage problems. Whenever and wherever selfishness is subdued Nature rules with a sensitive hand.

Very intimately related, too, to the character of society as a whole is the function of marriage in subduing selfishness. As genuine marriage softens and subdues the selfish spirit of marital partners toward each other, so does it intensify the purposes and broaden the field of the unselfish life. True marriage is the kindergarten of the regenerating soul. From it proceeds all manner of unselfish righteousness, and upon its moral fruitions society depends for the ultimate reign of justice and peace.





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